

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Copy w/ affidavit of mailing

*B
PMS*

74-2651

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2651

UNITED STATES OF AMERICA,

Appellee,

—against—

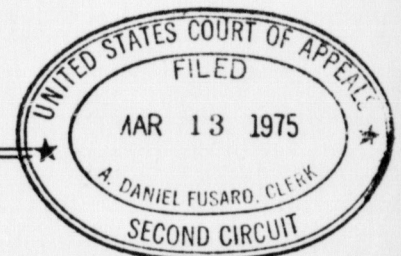
ORLANDO MIRANDA,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



PAGINATION AS IN ORIGINAL COPY

INDEX TO GOVERNMENT'S APPENDIX

	PAGE
Excerpts from Trial Transcript	A-1

Q Is there a woman sitting next to you?

A Yes.

Q Can you identify that woman?

A Well, I can't see her face, but I believe that's
my friend Georgie.

Q Georgie?

A Yes.

Q What is her last name?

A Rivera.

MR. LEVIN-EPSTEIN: May we approach the side bar,
your Honor?

THE COURT: Yes.

(The following took place at side bar.)

THE COURT: Let me see the pictures.

What is the problem?

MR. LEVIN-EPSTEIN: I believe, although I can't
be sure, that Mr. Todel is about to elicit the identity
of this person here.

MR. TODEL: Yes.

MR. LEVIN-EPSTEIN: If he is attempting to find
out the identity, let me indicate to the Court at this
time that this person is also a Confidential Informant
of the Drug Enforcement Administration. And if her
identity, her true identity is made known, it will re-

1 2
2 sult, I will represent to the Court, with the same degree
3 of peril as if Miss Rodas' true name were known.

4 Miss Rodas, of course, is the witness. I can make
5 known this person's true name to Mr. Todel if the Court
6 so directs.

7 However, to inquire in open court as to this per-
8 son's true name at this time may have a result of danger
9 to both parties, which I believe goes beyond the scope
10 of proper cross-examination.

11 THE COURT: Well, I will consider whether that
12 prejudices the defendant. But what is your next ques-
13 tion going to be? What do you want to find out?

14 MR. TODEL: I would want to know her relationship
15 with this witness.

16 THE COURT: You can ask her the relationship,
17 but don't ask for her name or address in the courtroom.

18 MR. TODEL: I won't.

19 MR. LEVIN-EPSTEIN: Thank you.

20 MR. TODEL: Your Honor, we might as well -- I'm
21 going to show her another picture, also. So if he has
22 any --

23 MR. LEVIN-EPSTEIN: I understand that this person
24 depicted on the extreme right of the photograph is the
25 same person.

1 3

2 THE COURT: I see. All right.

3 MR. LEVIN-EPSTEIN: The same person as in the
4 other photograph. And I would as that the Court's
5 instructions apply to this photograph as well.

6 THE COURT: Yes.

7 (End of side bar.)

8 Q Miss Rodas, what is the name of the person that
9 you stated --

10 A Georgie.

11 MR. LEVIN-EPSTEIN: Objection.

12 THE COURT: Yes.

13 MR. TODEL: I want to get the first part.

14 THE COURT: The objection is overruled.

15 Q Now, Georgie, is she a friend of yours?

16 A Yes.

17 Q Is she also a -- Does she work for the Government,
18 too?

19 MR. LEVIN-EPSTEIN: Objection.

20 THE COURT: I think he's entitled to ask that.

21 THE WITNESS: I don't understand what you mean
22 by working for the Government. She accompanied me to
23 the Jaguar Lounge many times. She would meet me there.
24 Take a cab and meet me in front of the Jaguar Lounge.

25 Q I see. Was she employed by the Government?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

4

MR. LEVIN-EPSTEIN: Objection as to form.

THE COURT: Sustained.

Q Do you know whether she was ever convicted of a crime?

MR. LEVIN-EPSTEIN: Objection.

THE COURT: No, that may be answered.

THE WITNESS: Yes.

Q Was she convicted also for drugs?

A Yes.

Q Was she in the same indictment with you?

A Yes.

MR. TODEL: If the Court please, I want to abide by your -- May I approach the bench? I think --

THE COURT: All right.

(The following took place at the side bar.)

THE COURT: Maybe you know more about it than Mr. Levin-Epstein.

MR. TODEL: I don't know who the person is, and I would want specifically --

MR. LEVIN-EPSTEIN: Your Honor, for purposes of the side bar, I can indicate to the Court that the person depicted in the photograph referred to by the witness as Georgie is one Iris Maldonado. However, the Government does not intend to call her as a witness in this

1 5
2 case. And with the same representation I made to you
3 early, of course, still holds true. If the name in
4 this indictment, which, of course, is a public record,
5 is connected to this person, I feel that this -- the
6 same danger will be present as if Mr. Todel announced
7 in the courtroom who the person is.

8 MR. TODEL: Well, you know, I have just received
9 this today. And in just checking the docket, the records,
10 I believe Iris Maldonado -- I am not sure whether she
11 also received a suspended sentence.

12 MR. LEVIN-EPSTEIN: Ask her whether she -- You
13 already established her name. Ask her if she received
14 a suspended sentence. But I will ask that you not ask
15 her the name.

16 THE COURT: Yes, I think that is all right.

17 MR. LEVIN-EPSTEIN: All right.

18 (End of side bar.)

19 Q Miss Rodas, the woman whom you identified as
20 Georgie, she was indicted in the same case with you; is that
21 correct?

22 A Yes.

23 Q And she was also indicted with you for knowingly
24 importing into the United States approximately ten pounds of
25 cocaine on August the 5th, 1973; is that correct?

1 6

2 A Yes.

3 Q She also was indicted with you for knowingly and
4 intentionally importing into the United States ten pounds of
5 cocaine on September 23, 1973; is that correct?

6 A Yes. She was indicted on the same charge as I
7 was.

8 Q Including the one on October 8, 1973; is that
9 correct?

10 A Correct.

11 Q Did she plead Guilty, too?

12 A Yes.

13 Q Did she also receive a suspended sentence?

14 A She received five years probation, as I.

15 Q I see. You do not know what I mean by, when I
16 ask you the question, Is she working for the Government?

17 MR. LEVIN-EPSTEIN: Objection as to form.

18 THE COURT: Sustained. You can try it another
19 way.

20 Q Miss Rodas, if you know, is Georgie working as
21 an Informer for the Drug Enforcement Bureau?

22 MR. LEVIN-EPSTEIN: Objection.

23 THE COURT: No. She can answer, if she knows.

24 THE WITNESS: No, she was not under the employ-
25 ment -- neither was I -- as an Informer with the Govern-

1 7
2 ment. When you work with somebody, you get paid for what you
3 do. We did it freely.

4 Q And you got a suspended sentence for that?

5 A No, not because of that. I don't believe it was
6 because of that. I don't believe you can tell the Judge what
7 to give a person.

8 Q But the other people's names I mentioned, they
9 received a jail term; is that correct?

10 A Yes. They have been in the business longer.

11 Q I show you Defendant's Exhibit B. I ask you
12 whether or not you can identify the two women who are seated --

13 A Yes.

14 Q (continuing) -- in this picture.

15 Is one of them Georgie?

16 A Georgie, yes.

17 Q Who is the other person, the other woman?

18 A Toni.

19 Q Has Toni ever been convicted of a crime?

20 A No.

21 Q Pardon me?

22 A No.

23 Q That you know of; is that correct?

24 A She has never been convicted of a crime.

25 Q What is Toni's name?

8

A What's her name? Toni.

Q Toni what?

MR. LEVIN-EPSTEIN: Objection, your Honor. The witness has testified that her name is Toni.

THE COURT: Well, I think she can tell the rest of her name, if she knows.

MR. LEVIN-EPSTEIN: If she knows.

THE COURT: Do you know her last name?

THE WITNESS: No.

THE COURT: All right, go ahead.

THE WITNESS: I don't know her last name.

(continued on next page.)

eG fls

LeG:GA
T3 PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q You don't know her last name?

A No.

Q When you went to the Jaguar restaurant, did you go the the Jaguar restaurant with Toni?

A No, Toni always met me there. She was always inside.

Q Had you met Toni the first time in the Jaguar restaurant?

A No.

Q Where had you known Toni before?

A From where she worked.

Q And where did she work?

A She worked in the restaurant.

Q What restaurant?

A I'm sorry, I can't answer that.

MR. LEVIN-EPSTEIN: May we approach the side bar, your Honor?

THE COURT: All right.

(Whereupon a side bar conference was had.)

MR. LEVIN-EPSTEIN: Your Honor, I assume Mr. Todel is now placing the witness in a position of giving up information about the identity of a very close friend of hers who, I think, will be under the same perils. She is a close friend of the witness, I'm told. Now,

1 2
2 whether or not a threat is imposed upon the witness
3 directly, or one close to her, accomplishes the same
4 purpose. The question is -- But if it has the design
5 to intimidate the witness, I would ask that the question
6 be not pertinent to the cross-examination of the witness.

7 MR. TODEL: This defendant is facing fifteen
8 years as I stated to the Court, there are certain pecu-
9 liarities about this case, and I feel that cross-examin-
10 ation -- these are proper questions.

11 THE COURT: Well, the question now is, What
12 restaurant she worked at.

13 MR. LEVIN-EPSTEIN: She will not answer. I will
14 ask the Court to recognize her concern for the safety
15 of this person. I wonder if the Court is as interested
16 as I am about these peculiarities that Mr. Todel keeps
17 mentioning.

18 MR. TODEL: This is a judgment I am making. I
19 may be wrong. There is something about this case which
20 I feel --

21 MR. LEVIN-EPSTEIN: With all due respect to Mr.
22 Todel's experience --

23 THE COURT: She doesn't want to answer. I'll have
24 to consider what effect that has on her testimony. There
25 is so much I can hold out.

#3

MR. LEVIN-EPSTEIN: The Government didn't intend to hold back anything. The Government does recognize its obligation to persons who cooperate, to protect them, the ones they care about.

THE COURT: To testify, they have to do something, too. I'm not sure how relevant this is.

Go on with some other question, we will get to that in the morning.

CROSS EXAMINATION

BY MR. TODEL: (continuing)

Q Miss Rodas, I show you Defendant's Exhibit B for identification, and ask you whether or not you can tell the Court and Jury who the gentleman is with the mustache?

A That's the Agent Otavio.

Q Now, you stated on direct examination that when you were arrested in January -- Do you know what date it was in January that you were arrested?

A On the 24th.

Q And when you were arrested, did you report to Court?

A Yes.

Q And after you were brought to Court, were you released on bail?

A No. I was released on my own recognizance.

CROSS-EXAMINATION

BY MR. TODEL (continued):

Q Mrs. Rodas --

THE COURT: Mrs. Rodas, you were sworn yesterday.
You are still under oath today.

THE WITNESS: Yes.

Q Yesterday you testified that on February 28th
you had been at the Drug Enforcement Bureau Office in Manhattan?

A Yes.

Q And at that time you had a conversation with
Agent Schnackenberg and one or two other agents; is that
correct?

A That's correct.

Q Were you there alone?

A No.

Q Who was with you?

A Georgie.

Q I see. Was she an informer, just like you?

A Yes.

Q So when you went to the office of the Drug
Enforcement Bureau, you were with Georgie at that time?

A Yes.

Q And at that time did any of the agents tell you
-- or prior to that particular day, did any of the agents tell

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Was Georgie present when you had this conversation?

A She was present, but all my conversation with Mr. Miranda was always in private between the two of us whereas no one ever heard any part of our conversation.

(continued on next page)

rbella
amR2
llows

CROSS-EXAMINATION

BY MR. TODEL: (Cont.)

Q I see. At that time you had a conversation with him about going into business together; is that right?

A Yes. That's the date. I believe that's the day he told me that he would like to go into partnership with me.

Q Then you stated that you saw Mr. Miranda on another date; isn't that correct?

A Yes.

Q And prior to seeing him on another date, you went up to see the agents on March 22nd?

A Yes.

Q Was Georgie with you at that time?

A March 22nd, yes.

Q Then on March 22nd, you went to the Jaguar Restaurant again, and did you have a transmitter on you at that time?

A The 23rd, I don't believe so. NO, not on the 23rd. I don't believe so.

Q And then there came a time on the 25th of March that you went to see Mr. Manola; is that correct?

A That's correct.

Q And did you have a transmitter on you at that

1
2 time?

3 A Yes.

4 MR. TODEL: May we approach the bench, your
5 Honor.

6 THE COURT: All right.

7 (The following took place at the side bar.)

8 MR. TODEL: If the Court please, I respectfully
9 request the Government to turn over to me the tape
10 which was utilized or used by this particular witness
11 as a result of her conversation -- as a result of
12 wearing the wire transmitter which hasn't been turned
13 over at all.

14 MR. LEVIN-EPSTEIN: Your Honor, as I have indi-
15 cated to you earlier and to Mr. Todel, all the tape
16 recordings which were made under circumstances in
17 which the witness was wired for sound have been made
18 available to Mr. Todel from the beginning. Mr. Todel
19 was in my office last Friday and had them available to
20 listen to any and all the tapes. I have also --

21 THE COURT: Is she wrong in saying there was
22 one on March 25th.

23 MR. LEVIN-EPSTEIN: No. But I have allowed Mr.
24 Todel to listen to all the tapes in our possession.
25 And Mr. Todel also has the opportunity to copy those

1
2 tapes at his convenience in my office if he wishes.

3 MR. TODEL: If the Court please, Mr. Levin-
4 Epstein is correct. I was in his office at which time
5 I listened to six or seven tapes. And these tapes took
6 place in the month of May -- the month of May. Mr.
7 Schnackenberg played the tapes. These were the only
8 tapes that were -- I was told that existed other than
9 the April 2nd --

10 MR. LEVIN-EPSTEIN: That's correct.

11 MR. TODEL: Now, for the first time, yesterday,
12 when I -- when I had the 3500 material and the testimony
13 of this witness, that on two occasions in March she
14 was wired. And I haven't heard --

15 THE COURT: Let's take it up this afternoon
16 without taking time from the jury.

17 MR. LEVIN-EPSTEIN: I can explain that to the
18 Court right now.

19 THE COURT: No, let's do it this afternoon.

20 (End of side bar.)

21 BY MR. TODEL:

22 Q Mrs. Rodas, on March 20th, you stated that
23 you were -- you had a wire transmitter and also on March 25th
24 you stated you had a wire transmitter; is that correct?

25 A Yes.

1
2 Q March 25th is a date when you allegedly had
3 given \$6,000 to Mr. Miranda; is that correct?

4 A Yes.

5 Q And you wore -- and you were in an automobile
6 with him; is that correct?

7 A Yes.

8 Q Have you listened to those tapes?

9 A No. That one I didn't hear. I didn't listen
10 to that one.

11 Q Did you listen to the tape of March the 20th?

12 A No.

13 Q And the only person present at the time that
14 you stated that Mr. Miranda told you that he wanted to go into
15 business with you on March the 20th was you and he; is that
16 correct?

17 A That's correct.

18 Q And the only person present when you stated
19 that you gave \$6,000 to Mr. Miranda was just you and Mr.
20 Miranda; is that correct?

21 A That's correct.

22 Q And on both of these dates you had a wire
23 transmitter on you; is that correct?

24 A Yes.

25 Q Now, on March 25th you stated that you went to

1
2 the bar; is that correct?

3 A Yes.

4 Q The Jaguar Bar.

5 And you stated that was sometime after 4 o'clock
6 or so; is that correct?

7 A A few minutes after 4.

8 Q Do you know a Mr. Castillo (phonetic)?

9 A Castillo?

10 Q Do you know an agent, a Spanish-speaking agent?

11 A Costello, yes.

12 Q Have you ever spoken to him?

13 A Yes.

14 MR. TODEL: May we have this marked for
15 identification, please.

16 THE CLERK: Document marked defendant's exhibit
17 C for identification.

18 (So marked.)

19 MR. LEVIN-EPSTEIN: May I see the exhibit, your
20 Honor.

21 THE COURT: Well -- all right.

22 BY MR. TODEL:

23 Q Mrs. Rodas, have you ever spoken to Mr. Castillo
24 with reference to the facts in this case?

25 A On the April 2nd. But that was when I gave him

1
2 my transmitter and he searched me.

3 Q And did you have any conversation at all with
4 him?

5 A I really can't recall. I know he was present
6 at times when I went into the agents' office.

7 Q I see. He may have been present in some of
8 the conversations that you had with Agent Schnackenberg or
9 Agent MacMullen; is that correct?

10 A Yes.

11 Q I show you defendant's exhibit C for identifica-
12 tion and direct your -- I ask you to read the first three
13 paragraphs -- four paragraphs.

14 Have you read the first three or four para-
15 graphs?

16 A The first two.

17 Q Right.

18 And do you recall ever telling Mr. Castillo --
19 is this refresh your recollection at the time you stated that
20 you went to the Jaguar Restaurant?

21 A Mr. Castillo, I believe was with the agents on
22 March 25th in another car. But at that time I didn't recall
23 speaking to him. Because the ones I spoke to were Agents
24 Schnackenberg and Mr. MacMullen.

25 Q And did -- at any time did you ever tell anyone

1
2 that you were there at 3 p.m.?

3 A Where?

4 Q At the Jaguar Bar on March 25th?

5 A No. I was never there at 3 p.m.. The bar
6 didn't open until 4.

7 Q Was anyone in the bar when you arrived there
8 on March 25th?

9 A Yes.

10 Q Who was there?

11 A Tony was there and the barmaid.

12 Q Was Georgie there?

13 A Yes. She came in with me.

14 Q When you -- that was on March 25th; is that
15 correct?

16 A March 25, yes.

17 Q Now, when you were in the -- where did you re-
18 ceive the \$6,000, by the way, Mrs. Rodas?

19 A From the officers of the agents.

20 Q Where?

21 A 57th Street in Manhattan.

22 Q 57th Street. And who was present at the time
23 that you received those moneys?

24 A Agent MacMullen, Schnackenberg and Georgie.

25 Q And did there come a time when you left the

1 Drug Enforcement Bureau office in Manhattan?

2 A Yes.

3 Q Who was in the car with you?

4 A When I went to the Jaguar?

5 Q Yes.

6 A Georgie was with me.

7 Q I see. You both went together; is that correct

8 A Yes, we went together.

9 Q When you arrived at the bar, Tony was there?

10 A She was there.

11 Q Did you go into the bar?

12 A She was already inside.

13 Q Did you go into the bar?

14 A Yes.

15 Q Did you have any conversation with Tony?

16 A Just hello.

17 Q And Georgie remained in the bar?

18 A Yes.

19 Q And then you left; is that correct?

20 A Yes.

21 Q And did you leave with anyone?

22 A Yes.. I left with Manola.

23 Q Prior to your coming to the bar on March 25th,
24 had you specified a specific time to meet Mr. Miranda?
25

1
2 A Yes.

3 Q When was that time?

4 A For 4 in the afternoon.

5 Q When did you set this appointment with Mr.

6 Miranda?

7 A On the 23rd.

8 Q On the 23rd?

9 A March 23rd. -Yes.

10 Q That's the date when you say you weren't wired;
11 is that right?

12 A I don't recall being wired that day.

13 Q When you came into the bar, you met Mr. Miranda
14 and then he asked you -- what did he ask you?

15 A He asked me to drive him to the V & J Auto
16 Shop.

17 Q That is about four or five minutes away?

18 A A few minutes.

19 Q You go straight down Roosevelt Avenue to

20 College Point Boulevard; is that correct?

21 A Yes.

22 Q And did you have a conversation with him in
23 the car at that time?

24 A Yes.

25 Q Did there come a time after this conversation

1
2 that you testified to yesterday as to what happened?

3 A During our conversation?

4 Q No. After the conversation.

5 A Well, we had already made the exchange and I
6 went to the V & J. He told me to wait for him. Then he
7 went across the street. He spoke to the man in the auto
8 shop and he came back and told me his car was ready and to
9 meet him at the Jaguar.

10 Q I see. And then did he leave?

11 A He got into his car and left. And I drove
12 directly behind him. But I told him I wasn't going to the
13 Jaguar. I was going to go someplace else first to drop off
14 what I had with me.

15 Q Isn't it a fact that you went to the Jaguar
16 immediately after?

17 A After I returned from the designated meeting
18 place with the agents, then I went back to the Jaguar.

19 Q Do you know what time it was that you got back
20 to the Jaguar?

21 A I would think somewhere after 5.

22 Q Was Georgie there?

23 A She was still there.

24 Q Was Tony still there?

25 A Yes.

1
2 Q Then there came a time you say on April the 2nd
3 that you went to see Mr. Miranda again; is that correct?

4 A That's correct.

5 Q Did you first go to the Drug Enforcement
6 Bureau?

7 A Yes.

8 Q Who was there at the Drug Enforcement Bureau
9 with you?

10 A Agent MacMullen, Schnackenberg, Castillo,
11 Georgie and Linda, the secretary was there.

12 Q I see. At that time was \$4,000 given to you?

13 A Yes.
14
15
16
17
18
19
20
21
22
23
24
25

Rodas-cross

1
2 BY MR. TODEL:

3 Q You then went to the Jaguar Bar?

4 A From the office we went down to my vehicle that
5 was searched also and then we went.

6 Q On April 2nd the vehicle was searched?

7 A Yes.

8 Q And when you say "we went", you went to the bar
9 with Georgie?

10 A Yes, and the agents were in the car behind me.

11 Q When you arrived at the bar, was anyone there?

12 A Yes.

13 Q Who?

14 A The barmaid and Tony and some plumbers and other
15 men who were working in the place.

16 Q And did you have a conversation with Mr. Miranda
17 at that time?

18 A Yes. Well, after that fifteen minutes we went
19 downstairs to his kitchen.

20 Q To his kitchen?

21 A Yes.

22 Q Was anyone down in the kitchen?

23 A There were men in the back part of the kitchen
24 working.

25 Q Did you go anywhere downstairs in this basement---

G:jm
2amR1

1
2 how long were you down there?

3 A About fifteen or twenty minutes.

4 Q You had a conversation with Mr. Miranda down
5 there?

6 A Yes.

7 Q Were you wired at that time?

8 A Yes.

9 Q Did you listen to the tape of that particular
10 date of April the 2nd?

11 A Yes.

12 Q Is there any mention at all on that tape about
13 turning over four thousand dollars to Mr. Miranda -- yes or no?

14 A No. That didn't come out.

15 Q Is there anything on that tape where Mr. Miranda
16 said to you that the alleged cocaine was all right that he
17 gave to you? Is there anything at all in the tape about that?

18 A In those words, no.

19 Q And is there something that appears on that
20 particular tape with reference to Mr. Miranda saying anything
21 to you, anything about cocaine?

22 A Not in those words.

23 Q Isn't it a fact that you used some words; is
24 that correct?

25 A That's right.

Rodas-cross

Q Now, Mrs. Rodas, you stated that on April 19 you had a conversation with Mr. Miranda --

A Yes --

Q -- (continuing) -- and did anyone participate in that conversation other than you and Mr. Miranda?

A No. All our conversations were in private.

Q Were you wired at that time?

A The 19th, yes, I was wired.

Q Did you listen to the wire of that particular date?

A No, not that I can recall.

Q And that is the date that you stated that there was some conversation about his going to Puerto Rico; correct?

A I believe that was the time. Precisely, right now, I can't tell you, but I believe that was the time. It was either the 19th or the 23rd.

Q Now, you stated on May the 8th, 1974 you had another conversation with Mr. Miranda; is that correct?

A May the 8th -- yes.

Q And with whom -- who else was present at this conversation?

A The agent, Octavio.

Q Did you introduce Octavio to Mr. Miranda?

A Yes.

Rodas-cross

Q And what was the conversation again, that you stated took place on that particular date?

A Well, Octavio, after the introduction, Octavio thanked Menollo for the favor that he had done?

Q Did Mr. Menollo say what that favor was?

A No.

MR. TODEL: Bear with me just one moment, your Honor.

THE COURT: All right.

(Pause.)

BY MR. TODEL:

Q Mrs. Rodas, when you left the body and fender place where you dropped off Mr. Miranda, how long did it take you to get to the area where you were supposed to meet the agents or where you did meet the agents?

A About twelve or fifteen minutes.

MR. TODEL: May I speak with my client one moment, your Honor?

THE COURT: Yes.

MR. LEVIN-EPSTEIN: May I inquire if the Court intends to take a morning recess, considering that the afternoon may not be available for trial?

THE COURT: I gave a recess for Mr. Todel to talk with his client. He should be entitled to talk

Rodas-cross

with his client.

MR. LEVIN-EPSTEIN: No. I didn't mean that --

THE COURT: Well, please let Mr. Todel proceed.

MR. LEVIN-EPSTEIN: Very well.

(Pause.)

BY MR. TODEL:

Q Mrs. Rodas, when you left the body and fender place which way did you travel to go to the area where you were going to meet the agents?

A On Roosevelt Avenue and I made a left on Junction Boulevard.

Q And when you went down Roosevelt Avenue from the body and fender place you would have to pass the Jaguar Bar; correct?

A That is correct.

Q In fact, you would be on the same side on Roosevelt Avenue as the Jaguar Bar?

A That is correct.

Q Isn't it a fact that you stopped at the Jaguar Bar and told Georgie and Tony and Mr. Miranda, who arrived before you, that you had to go someplace and you would be right back?

A I told Mr. Miranda at the body and fender shop that I had to go someplace first to drop off what I had and

1
2 then I would return to the Jaguar Lounge.

3 Q Didn't you stop at the Jaguar Bar before you
4 met the agents and you told Tony and Georgie that you had to
5 go somewhere and you would be back to pick them up?

6 A No, at no time did I go inside the Jaguar Lounge
7 before I saw the agents.

8 MR. TODEL: No further questions.

9 THE COURT: Any redirect, Mr. Levin-Epstein?

10 MR. LEVIN-EPSTEIN: One moment, your Honor,
11 please.

12 THE COURT: Yes.

13 (Pause.)

14 MR. LEVIN-EPSTEIN: I have no questions on
15 redirect, your Honor.

16 THE COURT: Is your next witness here?

17 MR. LEVIN-EPSTEIN: Yes. My next witness is
18 Special Agent Schnakenberg, your Honor.

19 One moment, your Honor.

20 THE COURT: All right.

21 (Pause.)

22 MR. LEVIN-EPSTEIN: The Government calls
23 William Schnakenberg, your Honor.

24
25 (continued on next page)

1 WILLIAM SCHNAKENBERG, called as a witness,
2 having first been duly sworn by the Clerk of the Court,
3 took the witness stand and testified as follows:

4 THE CLERK: State your name, please.

5 THE WITNESS: William Schnakenberg.

6 THE CLERK: Spell it, please.

7 THE WITNESS: S-c-h-n-a-k-e-n-b-e-r-g.

8 DIRECT EXAMINATION

9 BY MR. LEVIN-EPSTEIN:

10 Q What is your occupation, Mr. Schnakenberg?

11 A Special Agent, United States Justice Department,
12 Drug Enforcement Administration.

13 Q For how long have you been employed as an agent
14 of the Drug Enforcement Administration?

15 A Since it came into being, approximately a year
16 ago July.

17 Q Prior to that time, where were you employed?

18 A As a Special Agent with the Bureau of Customs.

19 Q Was there a Bureau of Customs and what was then
20 known as the Bureau of Narcotics and Dangerous Drugs?

21 A Correct.

22 Q And did a merger of those two agencies result in
23 an agency called the Drug Enforcement Administration?

24 A Yes, sir.

25 Q What is the total duration of your employment in

1 Schnakenberg-direct

2 the area of narcotics enforcement?

3 A Seven to eight years.

4 Q What is your current assignment, Agent
5 Schnakenberg?

6 A I am assigned to Group 33, headed by Special
7 Agent McMullan.

8
9 (continued on next page)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

la

s

1
2 Q That is located in the metropolitan New York
3 area?

4 A Yes.

5 Q Where are the offices of Group 33?

6 A 555 West 57th Street, Manhattan.

7 Q That's New York City?

8 A Yes, sir.

9 Q Agent Schnakenberg, do you know the name Orlando
10 Miranda?

11 A Yes, I do.

12 Q Have you learned that name as part of your
13 official duties?

14 A Yes, I have.

15 Q Do you see a person known to you as Orlando
16 Miranda here in court today?

17 A Yes, I do.

18 Q Would you indicate for the jury who that person
19 is.

20 A The gentleman sitting at this table.

21 MR. LEVIN-EPSTEIN: May the record indicate,
22 your Honor, the witness identified the defendant
23 Orlando Miranda.

24 THE COURT: All right.

25 Q Agent Schnakenberg, I direct your attention to

1 March 25th of 1974. Were you working on that day?

2 A Yes, I was.

3 Q Will you tell the jury where you were working.

4 A I was in my office at 57th Street in Manhattan.

5 Q In the afternoon of that day, March 25th, did
6 you have occasion to meet with the witness that just testified,
7 Miss Gloria Rodas?
8

9 A Yes, I did.

10 Q Can you tell the jury what happened when you
11 met with Miss Rodas at that time.

12 A I gave her \$6,000, official Government money.

13 Q Is that -- let me ask you this. You say
14 official Government money. Is that United States currency?

15 A Yes, it is.

16 Q Go on. I'm sorry.

17 A It's currency that the serial numbers have been
18 taken off.

19 Q Very well. Go ahead. What happened after that?

20 A Myself and Agent MacMullan gave her \$6,000.
21 She was searched. A transmitter was placed on her. We went
22 down to the vehicle.

23 Q You testified that you -- that the witness,
24 Miss Rodas, was searched. What was the result of that search?

25 A Negative search.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What were you looking for?

A Anything that shouldn't be there.

Q You said then that you went down to her car?

A Yes.

Q Who went down to the car with you?

A Myself, Agent MacMullan. And there were other agents present.

Q Of course, Miss Rodas?

A And Miss Rodas.

Q What happened when you arrived at the car?

A We searched the vehicle.

Q What was found in the vehicle?

A It was a negative search. There was nothing there except an attache case on the back seat.

Q And the attache case was there when you searched the car?

A Yes.

Q Did you have occasion to search the attache case?

A Yes.

Q What did you find in the attache case if anything?

A Papers. Personal papers.

Q After having searched the car and the attache

1
2 case, what happened then?

3 A Miss Rodas got into her vehicle and the sur-
4 veillance began.

5 Q Will you describe to the jury what you mean by
6 surveillance in this case.

7 A I don't remember exactly how many agents there
8 were or how many vehicles there were.

9 Q Were you involved in the surveillance?

10 A Yes. I was in the car directly behind it.

11 Q Who else was present in the car with you?

12 A On that day was myself, Agent McMullan, Agent
13 Castillo and I believe Agent Dolan was in the car that day.

14 Q You testified earlier that Miss Rodas had been
15 given a transmitting device.

16 A Yes.

17 Q Can you describe to the jury how that trans-
18 mitting device works?

19 MR. TODEL: Objection. I don't know if he is
20 competent to testify to that.

21 THE COURT: Overruled.

22 Q Go on with your answer, please.

23 A A transmitting device works --

24 Q Let me be more specific, Agent Schnakenberg.
25 I am not asking you for the electronic intricacies of the

1
2 device, but rather what happens when one of these devices is
3 used? How does it work?

4 A If you are within so many feet, any conversa-
5 tion that is picked up by the microphone will be transmitted
6 into a receiver. The receiver was in my car.

7 Q I see. When Miss Rodas entered her own vehicle,
8 was she alone?

9 A No. I don't believe she was.

10 Q By the way, you were here during the course
11 of her testimony, were you not?

12 A Yes.

13 Q What happened after you and the three other
14 agents that were in your car with you left following Miss
15 Rodas from the Drug Enforcement Administration address?

16 A She went directly to the Jaguar Lounge.

17 Q Did you maintain surveillance of her at that
18 time?

19 A Yes.

20 Q Did you ever lose sight of her?

21 A Never.

22 Q Approximately what time did she arrive at the
23 Jaguar Lounge?

24 A Approximately 4 o'clock. Approximately. I'm
25 not sure.

1
2 Q What happened when she arrived at the Jaguar
3 Lounge?

4 A She got out of her vehicle, parked it -- parked
5 it and then got out and went into the Jaguar Lounge.

6 Q All right. Did there come a time when you
7 observed her leaving the Jaguar Lounge?

8 A Yes.

9 Q Approximately how long after that?

10 A Minutes. I'd say less than five. Three or
11 four minutes.

12 Q Was she with anyone?

13 A Yes.

14 Q Who was she with?

15 A Orlando Miranda.

16 Q The defendant?

17 A Yes, sir.

18 Q What happened when they left the Jaguar Lounge?

19 A She got in the driver's seat. He got in the
20 passenger side.

21 Q Of what vehicle is that?

22 A Of her vehicle.

23 Q What happened then?

24 A She drove down Roosevelt Avenue to College Point
25 Boulevard.

1
2 Q Were you maintaining surveillance at this time
3 as well?

4 A Yes.

5 Q Go on.

6 A She made a right turn on College Point Boule-
7 vard and she stopped in front of -- I believe it's the D&J
8 Body and Fender Shop.

9 Q During the course of the trip, Agent Schnakenber-
10 between the Jaguar Lounge and the D&J Body Shop down Roosevelt
11 Avenue to College Point Boulevard, were you in radio reception
12 contact with her vehicle?

13 A Yes.

14 Q By the use of the transmitter that you already
15 described?

16 A Yes.

17 Q Did you overhear anything coming over the
18 transmitting device?

19 A Yes.

20 Q Was there a conversation?

21 A Yes.

22 Q In what language?

23 A Spanish.

24 Q Do you speak Spanish?

25 A No.

Q Did anybody in your vehicle speak Spanish?

A Yes.

Q Who was that?

A Agent Castillo.

Q Can you describe what -- withdrawn.

Did you have conversations among yourselves within the surveillance vehicle?

A Yes.

Q Without telling the jury who said what, as a result of the conversation that you had, what did you learn?

A I learned --

MR. TODEL: Objection, your Honor.

THE COURT: Sustained.

MR. LEVIN-EPSTEIN: Very well, your Honor.

Q You said you maintained surveillance of the vehicle to the D&J Auto Body Shop -- and when I speak of the vehicle, I mean Miss Rodas' vehicle.

A Yes.

Q Did there come a time when that vehicle came to a stop in front of the body shop?

A Yes.

Q Was it still under your observation at that time?

A Yes.

1
2 Q What happened after it stopped?

3 A The defendant got out and he went into the
4 auto body shop.

5 Q What about Miss Rodas? Did she get out?

6 A No.

7 Q She remained in the car?

8 A Yes.

9 Q What happened then?

10 A He came back to the car, matter of minutes
11 later, stayed briefly, matter of seconds, at the car. And
12 then he went to his car.

13 Q What happened then?

14 A I maintained surveillance on Miss Rodas, who
15 drove back to Roosevelt Avenue, made a left turn and went to
16 Junction Boulevard and made another left turn and stopped
17 at 57th Street where she was told to meet us.

18 Q Did there come a time when you met with her at
19 that place?

20 A Yes.

21 Q Can you describe for the jury what happened at
22 the meeting place at 57th and Junction Boulevard?

23 A Myself and Agent McMullan got out of the vehicle,
24 out of our vehicle and we entered Miss Rodas' vehicle.
25 McMullan got in the back and I got in the front. Agent

McMullan handed me the attache case that was on the back seat.

Q What did you do with the attache case?

A I opened it.

Q What did you find in it?

A I found the package.

Q Can you describe the package to the jury?

A The package was wrapped in tin foil -- aluminum foil, and contained a plastic. And inside that plastic bag was another plastic bag containing a white powdery substance.

MR. LEVIN-EPSTEIN: May this be marked for Identification, your Honor.

THE COURT: Yes.

THE CLERK: Plastic bag and contents marked Government Exhibit 1 for Identification.

Q Agent Schnakenberg, I show you what has been marked as Government Exhibit 1 for Identification. I ask you if you recognize it.

A Yes, I do.

Q What is it?

A It's the package that I took out of the attache case.

Q How do you know that?

A I have initialed it and dated it.

Q What initials are those that you placed on it?

1
2 A The date and my initials, WS.

3 Q After having removed this package from the
4 attache case, Agent Schnakenberg, what did you do with the
5 package?

6 A I handed it to Agent McMullan.

7 Q What did he do with the package?

8 A He performed a field test.

9 Q What is a field test?

10 A A field test is a quick test for negative or
11 positive reaction for cocaine.

12 Q What was the result of that field test performed
13 in your presence?

14 A Positive cocaine.

15 Q What did Mr. McMullan do with the package after
16 having field tested the contents?

17 A He handed it back to me.

18 Q What did you then do with the package?

19 A I kept it in my possession.

20 Q When you say you kept it in your possession,
21 what did you do with it after Mr. McMullan handed it back to
22 you? Did you take it anywhere?

23 A Yes. I took it to our office at 555 West 57th
24 Street in Manhattan with Agent McMullan.

25 Q What happened with the package when you arrived

1
2 at 555 West 57th Street?

3 A It was placed in a -- it was weighed and then
4 placed in a heat sealed envelope by myself and Agent Dolan.
5 He sealed it and I witnessed it and initialed it. From there
6 it was taken to the night deposit vault and signed into the
7 vault.

8 Q It was secured in the vault?

9 A Yes.

10 Q All right.

11 MR. LEVIN-EPSTEIN: May this be marked for
12 Identification, your Honor.

13 THE COURT: Yes.

14 THE CLERK: One-page document marked Government
15 Exhibit 2 for Identification.

16 Q Agent Schnakenberg, I show you what has been
17 marked as Government Exhibit 2 for Identification. I ask you
18 if you recognize the signature that appears where I am
19 indicating.

20 A Yes. My signature.

21 Q It's your signature?

22 A Yes.

23 Q Did you prepare this report?

24 A Yes, I did.

25 Q Can you describe to the jury what it is.

1
2 A It's a form showing where I took possession of
3 the cocaine and what I did with it, what was done with it.

4 Q So you made a report of that?

5 A Yes.

6 Q Agent Schnakenberg, after you removed the pack-
7 age from the attache case, did there come a time when this
8 meeting with Miss Rodas came to an end?

9 A Yes.

10 Q Where did you go from there?

11 A Directly back to our office.

12 Q I now direct your attention to April 2nd of
13 1974. I ask you, were you working on that day?

14 A Yes, I was.

15 Q Where were you working?

16 A In our office on 57th Street in Manhattan.

17 Q Did there come a time when you met with the
18 witness Gloria Rodas on that day?

19 A Yes.

20 Q In your office?

21 A Yes.

22 Q What happened at that meeting?

23 A She was given \$4,000 on that day, searched,
24 and a transmitter was placed on her, and then taken down
25 by myself, McMullan and Agent Castillo -- we went down to her

1
2 vehicle, searched the vehicle. She got in her vehicle and
3 we surveilled her directly to the Jaguar Lounge.

4 Q Did you watch her go into the Jaguar Lounge?

5 A Yes. She met the defendant in front of the
6 Jaguar Lounge outside in the street and walked in with him.

7 Q Did there come a time when she left the Jaguar
8 Lounge?

9 A Yes.

10 Q Did you meet with her at that time?

11 A Yes.

12 Q Where did you meet with her?

13 A 57th Street and Junction Boulevard.

14 Q Was this the standard plan the next time you
15 met with her?

16 A Yes.

17 Q Was she searched when you met her?

18 A Yes.

19 Q What were the results of the search?

20 A Negative.

21 Q Did you find the money?

22 A No.

23 Q Directing your attention to May 31st of 1974,
24 Agent Schnakenberg, were you working on that day?

25 A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Did you have occasion to make an arrest on that day?

A Yes, I did.

Q Will you tell the jury who you placed under arrest.

A I placed the defendant Orlando Miranda under arrest on that day.

Q What was he charged with?

A Violation of the Federal narcotics laws.

Q Now, you have heard testimony in this courtroom, Agent Schnakenberg, from Miss Rodas on the witness stand about certain money that she received from the agents of the Drug Enforcement Administration above and beyond the \$10,000 that you provided to her for purchasing this cocaine; is that correct?

A Yes, sir.

Q Can you tell the Grand Jury --

THE COURT: Petit Jury.

MR. TCDAL: Trial jury. Objection.

THE COURT: Tell the trial jury. You said the Grand Jury. This is not a Grand Jury.

MR. LEVIN-EPSTEIN: I apologize, your Honor. I didn't realize.

THE COURT: All right, go ahead.

MR. LEVIN-EPSTEIN: I didn't realize.

Q Can you tell the jury approximately how much money you provided to Miss Rodas?

A Approximately \$7- or \$800.

Q Each time that you gave her money, was a record made of that?

A Yes.

Q Is this reduced to writing?

A Yes, sir.

Q What was the purpose of this money?

A The purpose was to cover --

MR. TODEL: Objection.

THE COURT: Overruled.

You may answer.

A The purpose was to cover her expenses.

Q Expenses in what, Agent Schnakenberg?

A In purchasing liquor, travel, et cetera. Anything to do with our investigation.

Q Approximately how many times that you are aware of did Miss Rodas go to the Jaguar Lounge as part of this investigation?

A I have to approximate. Maybe 30.

Q Did you provide her with money each time she went?

1

2

A No. Not every time.

3

4

Q Each time that she went, did she come back and report to you that she had gone?

5

A Yes.

6

Q Was the report made at each time that she went?

7

A No.

8

9

Q Was a report made of certain times that she went?

10

A Yes.

11

12

Q Can you tell the jury why a report was made as to some and not as to others?

13

MR. TODEL: Objection, your Honor.

14

THE COURT: No, I will let him answer.

15

16

THE WITNESS: A report was made on days she told myself or McMullan that narcotics were discussed.

17

Q So not every time she went?

18

A No.

19

20

Q You have also heard testimony from Miss Rodas on cross-examination that she was wired, and you have testified that she was wired with a transmitting device?

21

22

A Yes, sir.

23

24

Q Now, did this transmitting device also record what it hears?

25

A Sometimes.

1
2 Q Well, by that I mean is there a tape recording
3 device as part of the same device?

4 A Yes.

5 Q Where is the tape recording device?

6 A In an attache case in -- whoever is carrying
7 the attache case.

8 Q Is it part of the actual device placed on the
9 body of the person who is wired?

10 A It's not connected to it.

11 Q That's what I am asking. It's not connected
12 to it.

13 A No, it is not connected to it.

14 Q Did there come a time when you obtained certain
15 tapes that were made as a result of Miss Rodas being wired,
16 as she put it?

17 A Yes.

18 Q Had you reviewed those tapes?

19 A Yes.

20 Q You listened to them?

21 A Yes.

22 Q Is each and every one of those tapes clear?

23 A No.

24 Q Is each and every one of those tapes capable
25 of being understood?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No.

Q Is there any interference in any of the tapes?

A Every tape.

Q What kind of interference?

A I couldn't tell you what kind it is. But I know it was -- because it was a big area.

Q Area where?

A Where the Jaguar Lounge is located.

Q How often during the course of your official duties have you been involved with the use of electronic surveillance of this nature?

A Quite a few.

Q Approximately.

A 50.

Q All right. Out of approximately those 50 times, how many times have you had comparable experience that you described where you had interference on the tape and you couldn't understand it?

A 48.

Q Was Gloria Rodas on salary of the Drug Enforcement Administration?

A No.

Q Was she an employee of the Drug Enforcement Administration?

1
2 A No.

3 Q When she cooperated with you during the course
4 of this investigation, isn't it a fact that she had already
5 been sentenced on her own case?

6 A I don't remember.

7 Q When you spoke with Miss Rodas, did you make
8 any promises to her as to what you would provide to her
9 during the -- in return for her cooperation?

10 A I made no promises to her.

11 Q Isn't it a fact that --

12 MR. TODEL: If the Court please, if the witness
13 wants to respond and he wants to finish --

14 MR. LEVIN-EPSTEIN: I am sorry.

15 THE COURT: If there was more that you were
16 going to say, you may say it, Mr. Schnakenberg.

17 A She was told that her cooperation would be made
18 known.

19 Q To whom?

20 A I believe she was told to the sentencing judge.

21 Q Did you tell her who would tell the sentencing
22 judge what her cooperation was?

23 A I don't remember.

24 Q Just briefly, Agent Schnakenberg, from the time
25 I am taking you back now to March 25th, the day of the

1 transaction. From the time that you saw Gloria Rodas in
2 your office until the time that she handed over that pack-
3 age to you --
4

5 A She didn't hand it to me.

6 Q Or rather, you removed it from the attache case
7 I believe you said, did you ever lose sight of her?

8 A From which time, sir?

9 Q From the moment that you gave her the money in
10 your office, \$6,000, until the time that you removed that
11 package from the attache case, did you ever lose sight of her?

12 A Yes.

13 Q When?

14 A When she walked into the Jaguar Lounge for
15 approximately two minutes.

16 MR. LEVIN-EPSTEIN: Thank you. No further
17 questions.

18 THE COURT: You may cross-examine.

19 MR. TODEL: Excuse me just one minute, your
20 Honor.

21 (Continued on next page.)
22
23
24
25

CROSS-EXAMINATION

BY MR. TODEL:

Q Agent Schnadenberg, you stated that you worked for the Bureau of Customs as an agent. What was your title there?

A My last title there was Special Agent.

Q How long were you a Special Agent in the Bureau of Customs?

A Approximately five years.

Q Five years? And, while you were in the Bureau of Customs, you only worked on narcotics cases, is that correct?

A As an agent.

Q As a Special Agent for five years?

A No. I was an investigator for three of the five and then, I became a Special Agent.

Q I see. In other words, then for about two years, when you were with the Bureau of Customs, you had experience as a Special Agent in narcotics, is that correct?

A Right.

Q Did you do any other work for the Bureau of Customs during that two year period?

A No.

Q Now, you stated that on March 25, Mrs. Rodas

Schnadenberg-cross

1 2
3 was at the office of the Drug Enforcement Bureau, is that
4 correct?

5 A Yes, sir.

6 Q And, was Georgie there to?

7 A Yes. I don't remember if she was upstairs in
8 our office or if she waited downstairs.

9 Q And, after you say you searched Mrs. Rodas,
10 she then went to her automobile, is that correct?

11 A Yes.

12 Q And, at that time, Georgie went with her in the
13 automobile, is that correct?

14 A Yes, sir.

15 Q Georgie searched?

16 A No.

17 Q Now, since you sat here during Mrs. Rodas'
18 testimony, you heard that she stated she was also wired on
19 March 20, 1974, with an electrical transmitter. Do you re
20 member that?

21 A Yes.

22 Q And, do you have the tape of that March 20 --

23 A I do not know if she was wired on that date.
24 I would have to look in my records to see.

25 Q You have your records?

A No here, sir.

A 56

3

Schnadenberg-cross

Q I show you --

MR. TODEL: May we have this marked as an exhibit, please.

THE COURT: Yes.

THE CLERK: Two-page document marked defendant's D for identification.

(So marked.)

BY MR. TODEL:"

Q I show you defendant's exhibit D for identification and direct your attention to it. Can you tell us what this exhibit is, if you know?

A It's Drug Enforcement Form number 6, report of investigation.

Q Was this report prepared by you?

A No.

Q Is this a report which is prepared in the regular course of business of the Drug Enforcement Bureau?

MR. LEVIN-EPSTEIN: Government will stipulate as to its authenticity as a photocopy.

Q The information on this particular report refers to March the 20th, is that correct?

A That's correct, sir.

Q Would you read the report to yourself and I ask you whether or not that would refresh your recollection as

4 Schnadenberg-cross

to whether or not she was wired on March the 20th?

A According to this report, by Agent --

Q Does it refresh your recollection?

A I'm sorry. Yes, sir, it does refresh my
recollection.

Q Was she or was she not wired on that particular
date?

A Yes, she was.

Q Does the Drug Enforcement Bureau have a copy
of that tape of March the 20th, yes or no?

A I do not know if there was a tape made. She
was wearing a device. I do not know if there was a tape made.

The tape does not have to be made because she's
wearing a device. She was wearing a transmitting device. I
do not know if it was recorded or not.

Q A transmitting device also has the possibility
of being recorded too?

A Correct, sir.

Q In fact, you so testified?

A That's correct.

Q Now, on March 25, 1974, you stated that she
was wired for sound on that particular date, is that correct?

A That's correct, sir.

Q And, was a tape made of that particular

Schnadenberg-cross

5

conversation?

A Yes, it was, sir.

Q Do you have that tape?

A No, I do not.

Q Does the Drug Enforcement Bureau have that tape?

A No, they do not.

THE COURT: Does the United States Attorney have that.

THE WITNESS: No, he hasn't.

Q Do you know where that tape is at the present time?

A No, I do not, sir.

Q That was the date when Mrs. Rodas was supposed to receive the cocaine from Mr. Miranda, is that correct?

A That's cothe date I took it out of her vehicle.

Q That's the date when you gave her \$6,000, which she alleged to have turned over to Mr. Miranda, is that correct?

A That's correct, sir.

Q There is no tape of that particular conversation, is that correct?

A That's correct, sir.

Q On April 2nd, 1974, you stated that you or

6 others of the Drug Enforcement Bureau gave Mrs. Rodas \$4,000?

A That's correct, sir.

Q And, was Georgie there with her at the time?

A I believe she was there that time, in the office.

Q And, was Mrs. Rodas searched?

A Yes, she was.

Q Was Georgie searched?

A I don't believe so.

Q After they left your office, you then, they then went into Georgie's car, is that correct?

A That is not correct. They went in Mrs. Rodas' car.

Q I'm sorry. In Mrs. Rodas' car. Georgie and Mrs. Rodas?

A Correct.

Q Was Georgie searched on March 25, 1974?

A I don't believe she was, sir.

Q Was she searched afterwards, after she had been at the office?

A I did not see her, no.

Q In other words, after Mrs. Rodas had gone to Junction Boulevard and 57th Street, did there come a time after the cocaine as alleged was taken out of the valise, did you or any member of the Drug Enforcement Bureau search

1 7
2 Georgie?

3 A I don't believe so, no.

4 Q Did anyone in the Drug Enforcement Bureau
5 search Tony?

6 A No, sir.

7 Q At no time did anyone in the Drug Enforcement
8 Bureau on April the 2nd, search Georgie or Tony. after they
9 had left the bar when the \$4,000 was alleged to have been
10 passed?

11 A I never saw them leave the bar, sir.

12 Q Of your own knowledge, you're a case agent in
13 this particular case, is that correct?

14 A That's correct, sir.

15 Q Do you know of anyone in the Drug Enforcement
16 Bureau who had searched the Mrs. Georgie or Tony?

17 MR. LEVIN-EPSTEIN: Objection.

18 THE COURT: Overruled, he may answer.

19 Q Searched Georgie or Tony afterwards, after the
20 4,000 was alleged to have been passed to Mr. Miranda?

21 MR. LEVIN-EPSTEIN: Objection, hearsay.

22 THE COURT: Overruled.

23 A To my knowledge, no.

24 Q I show you defendant's B for identification and
25 ask you whether or not you recognize Mrs. Rodas on this

8

Schnadenberg-cross

picture?

A Yes I do.

Q Do you recognize Mr. Miranda in this picture?

A Yes, I do.

Q Do you recognize a girl called Tony?

A Yes, I do.

Q Is that the girl who's wearing a hat in the picture?

A Yes, it is.

Q And, do you recognize Georgie in the picture?

A Yes, I do.

Q And, there is another gentleman in that picture, is that correct?

A Yes, sir, there is.

Q Do you know who he is?

A No, I do not.

MR. TODEL: At this time, defendant's offer in evidence defendant's exhibit B for identification.

THE COURT: Any objection, Mr. Levin-Epstein.

MR. LEVIN-EPSTEIN: No.

THE COURT: Just a minute.

THE CLERK: Defendant's B marked in evidence.

(So marked.)

THE COURT: Did you want to say something.

Schnadenberg-cross

THE WITNESS: Yes. When he asked me about the other gentleman, I was looking at this gentleman. I know this gentleman.

BY MR. TODEL:

Q Oh, yes. I'm sorry.

A I thought you meant this gentleman.

Q The man with the mustache in the picture?

A Agent Pinol, P-i-n-o-l, Octavio, first name; he is in from our Puerto Rico office.

M R. TODEL: May I pass --

THE COURT: Yes, let the jury look at it. I think we should continue with the questions while they're looking at it. If any juror is distracted by the picture and can't pay attention to the testimony, just raise your hand and we'll stop.

BY MR. TODEL:

Q Mr. Schnadenberg, you stated a few minutes ago that because of your experience as a Drug Enforcement Agent that approximately 48 out of 50 recordings, is that correct, that you could not understand?

A No, that's not correct.

Q I want to clarify.

A Fine, sir. I said that I've been involved in 50 and at least 48 of them at some point during that there

10 Schnadenberg-cross

was interference, you couldn't understand what was going on.
That's what I said, sir.

Q I see. Some that you couldn't hear anything at
all?

A When you say "anything at all", sir --

Q I'll withdraw the question.

But say, if someone was walking down allegedly
in a basement, in a kitchen, would you say there was inter-
ference there?

MR. LEVIN-EPSTEIN: Objection.

A Yes, sir.

THE COURT: Overruled. He may answer.

Q I'm not talking about a recording machine in
a bar going during the course of a conversation?

A I see.

MR. TODEL: No further questions.

THE COURT: Any redirect.

MR. LEVIN-EPSTEIN: Just one or two questions,
your Honor.

THE COURT: All right.

MR. LEVIN-EPSTEIN: Very brief.

REDIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Agent Schnadenberg, when Mrs. Rodas drove from

11
the Jaguar Lounge to the V & N Body Shop on March 25, along
with the defendant Orlando Miranda, was there anybody else
in the car with her then?

A No, sir.

Q Was Tony in the car with her?

A No, sir.

Q Was Georgie in the car with her?

A No, sir.

MR. LEVIN-EPSTEIN: No further questions.

THE COURT: I think probably, we should have a
five-minute recess. Have your next witness here. The
jury please go into the jury room and don't talk about
the case.

(The jury is excused at 11:38 a.m..)

(The following takes place out of the presence
of the jury.)

MR. TODEL: If the Court pleases, may I make a
statement on the record.

THE COURT: Yes.

MR. TODEL: I want to say to the Court I mean
this most respectfully, I think I misinterpreted the
statements that your Honor had made. I'd like to see
actually when the copy comes out with reference to the
fact that I went beyond what your Court felt that

1 you had instructed me. I really did not consciously¹⁴⁴
2 attempt to do that, your Honor, but I just want the
3 Court to know that.

4 THE COURT: All right. I had said that you
5 could ask whether she was imprisoned in 1961. I had
6 not intended to mean that was a sample.

7 MR. TODEL: This was the problem I had, your
8 Honor.

9 THE COURT: All right. Well, I don't know
10 whether I should take time now or whether I should
11 bother you this afternoon after my three Judge Court.
12 We do have problems about tapes which I think should
13 be worked out.

14 MR. LEVIN-EPSTEIN: I can clarify on the record
15 now, your Honor, the issue that Mr. Todel raised at the
16 side bar.

17 THE COURT: Tell me.

18 MR. LEVIN-EPSTEIN: Mr. Todel requested tapes
19 that were made whenever she was wired, is that correct?

20 MR. TODEL: Yes.

21 MR. LEVIN-EPSTEIN: As Mr. Schnadenberg
22 testified, not every time that the witness was wired
23 was a tape recording made of it.

24 THE COURT Well, you may have to get some
25 witnesses on to testify, to establish why not or

1 Mr. Todel will have a pretty good argument for the
2 jury about the fact there could be conversation that
3 doesn't exist.

4 MR. LEVIN-EPSTEIN: I was perfectly well aware
5 of that, your Honor.

6 THE COURT: All right. Bring in the jury. If
7 there are tapes that were made that Mr. Todel has not
8 had an opportunity to listen to --

9 MR. LEVIN-EPSTEIN: Let me clarify that once
10 again, before the jury comes out. Let me clarify that
11 once again. Every tape that was made has been played
12 for Mr. Todel in my office.

13 THE COURT: Well, you may have to go over it
14 with him and satisfy him as to dates that were testified.
15 Now, as to the fact, do you not have tapes.

16 MR. TODEL: I don't think --

17 MR. LEVIN-EPSTEIN: Can we hold the jury.

18 THE COURT: No, let's use the jury time for
19 testimony.

20 (Jury enters the Courtroom.)

21 (Continued on next page.)

22
23
24
25
nxt

McMullan - direct

1
2 THE COURT: Mr. Levin-Epstein, your next witness,
3 please.

4 MR. LEVIN-EPSTEIN: The Government calls William
5 McMullan.

6 W I L L I A M M C M U L L A N , having first been duly
7 Sworn by the Clerk of the Court, took the witness stand
8 and testified as follows:

9 THE CLERK State your name, please.

10 THE WITNESS: William McMullan.

11 THE CLERK: Spell it, please.

12 THE WITNESS: M-c M-ul-l-a-n.

13 DIRECT EXAMINATION

14 BY MR. LEVIN-EPSTEIN:

15 Q What is your occupation, Mr. McMullan.

16 A I am Supervisor with the Drug Enforcement Admin-
17 istration.

18 Q How long have you been so employed?

19 A Approximately a year and a half.

20 Q What was your occupation prior to your attaining
21 the rank of Group Supervisor?

22 A Special Agent, Bureau of Customs.

23 Q How long were you employed there?

24 A Six and a half years.

25 Q What is your assignment, Agent McMullan?

2

McMullan - direct

A I direct investigations of Agents within my Group.

Q Particularly what laws do you enforce?

A Violations of Federal Narcotics Laws.

Q Are you familiar with the name Orlando Miranda?

A Yes, I am.

Q Have you come to be familiar with name through
your office duties?

A Yes.

Q Do you see a man you know as Orlando Miranda in
court today?

A Yes, I do.

Q Point him out, please.

A The gentleman in the bluish-grey suit and white
shirt and blue tie.

Q Is that the defendant?

A At the defense table, yes.

Q Do you know a woman named Gloria Rodas?

A Yes, I do.

Q Directing your attention to March 20th of 1974,
were you working on that day?

A Yes.

Q Were you performing a surveillance function on
that day?

A Yes.

Q Where?

1 3

McMullan - direct

2 A At the Las Fuentes de Espanol Restuarant and Bar,
3 Junction Boulevard in Jackson Heights.

4 Q During your surveillance at the Las Fuentes, did
5 you see Gloria Rodas?

6 A Yes.

7 Q What did you observe?

8 A She entered Las Fuentes de Espanol at about 10:30
9 P.M.

10 Q Did there come a time when you saw her leave?

11 A Yes.

12 Q What time was that?

13 A Approximately 1:30 A.M.

14 Q That would have been the early morning hours of
15 March 21st?

16 A Yes.

17 Q Was she with anybody when she left?

18 A Yes.

19 Q With a man?

20 A No, she was not.

21 Q Where did she go from Las Fuentes?

22 A She drove down Roosevelt Avenue to 114th Street
23 to the Jaguar Lounge.

24 Q When she arrived at the Jaguar Lounge, did you
25 observe her enter?

4

McMullan - direct

A Yes.

Q Approximately what time was that?

A Approximately a quarter to 2:00.

Q Did you see her meet with anybody at that time?

A Not at that time.

Q I direct your attention to March 22, the next day, 1974, and I ask you, were you working on that day?

A Yes, I was.

Q Were you working in a surveillance capacity on that day?

A Yes, I was.

Q During the evening hours, did you have occasion to observe and surveil Gloria Rodas?

A Yes, I did.

Q What she do that night?

A (No response.)

Q Let me rephrase the question.

Where was the surveillance?

A At the Jaguar Lounge.

Q While surveilling the Jaguar Lounge, did you observe her enter?

A Yes.

Q Approximately what time was that?

A I can't recall.

1 5

2 Q You don't recall?

3 A No.

4 Q All right.

5 Did there come a time in the early morning hours
6 of March 23 when you met with Gloria Rodas?

7 A Yes, I did.

8 Q I now direct your attention to March 25, 1974.
9 Were you working on that day?

10 A Yes.

11 Q In the afternoon hours of that day, where were you
12 working?

13 A In my office.

14 Q Where is that?

15 A 555 West 57th Street.

16 Q Is that D.E.A. headquarters?

17 A Yes.

18 Q Did there come a time when you met with Gloria
19 Rodas at your office?

20 A Yes.

21 Q What happened at that meeting?

22 A I gave Gloria Rodas, along with Agent Schnakenberg,
23 \$6,000 in official advance funds.

24 Q What do you mean by "official advance funds"?

25 A This is money the Government has, and utilizes

1 6
2 for purchasing narcotics.

3 Q What else happened in respect to Gloria Rodas
4 after you gave her the \$6,000?

5 A I spoke with Gloria about where she was going
6 and what she was going to do.

7 She was going to the Jaguar Lounge --

8 MR. TODEL: Objection to any conversation with
9 Gloria.

10 THE COURT: You can give your instructions to her,
11 but don't tell what she said.

12 Q Getting past that, Agent McMullan, what actually
13 happened, physically, that you can testify that you saw after
14 you gave her the money?

15 A She -- We gave her a Kel transmitting device, and
16 counted the money. We gave her the money, and she was searched.

17 Q What was the result of the search?

18 A It was negative. She had no contraband on her.

19 Q After providing her with the money and her being
20 searched, what happened then?

21 A We went down to her vehicle, searched her vehicle,
22 and followed her to the Jaguar Lounge.

23 Q Was there an attache case in the vehicle?

24 A Yes.

25 Q Was that searched as well?

A Yes.

1 7

McMullan - direct

2 Q Was anything found?

3 A Papers and a small paper bankbook.

4 Q Was any contraband found?

5 A No.

6 Q After the vehicle was searched and the attache

7 case was searched, did there come a time when Gloria Rodas

8 entered her vehicle?

9 A Yes.

10 Q Did she drive somewhere?

11 A Yes.

12 Q Did you maintain surveillance?

13 A Yes.

14 Q From what vehicle were you maintaining surveillance?

15 A My vehicle.

16 Q Where was your vehicle in respect to hers?

17 A Directly behind it.

18 Q Where did she go?

19 A 114th Street and Roosevelt Avenue, and she entered

20 the Jaguar Lounge.

21 Q Approximately what time was this?

22 A In the early afternoon.

23 Q Did there come a time after she entered the Jaguar

24 Lounge when she exited the Jaguar Lounge?

25 A Yes.

1 8

McMullan - direct

2 Q How long after she entered did she exit the
3 Jaguar Lounge?

4 A A short time, no more than fifteen minutes.

5 Q Did she enter her vehicle again?

6 A Yes.

7 Q Was anyone with her?

8 A Yes.

9 Q Who was with her?

10 A The defendant.

11 Q Orlando Miranda?

12 A Yes.

13 Q Where did the car go?

14 A The car proceeded down Roosevelt Avenue to College
15 Point Boulevard.

16 Q And then?

17 A It made a right turn and went down two blocks and
18 stopped at V&J Auto Body.

19 Q During the course of this travel, were you in
20 radio reception contact with Gloria Rodas' vehicle?

21 A Yes.

22 Q Did you hear anything transmitted over the Kel
23 device you described?

24 A Yes.

25 Q Was it conversation?

McMullan - direct

1 9

2 A Yes.

3 Q In what language was the conversation?

4 A Spanish.

5 Q Do you speak the Spanish language?

6 A No.

7 Q Was there an Agent in the car with you who did
8 speak the Spanish language?

9 A Yes.

10 Q Who was that?

11 A James Castillo.

12 Q And is he an Agent of the Drug Enforcement Admin-
13 istration?

14 A Yes.

15 Q Did Agent Castillo translate what was being heard?

16 A Yes. As the conversations between Gloria Rodas --

17 MR. TODEL: Objection.

18 THE COURT: Overruled.

19 A As the conversations between Gloria Rodas and the
20 defendant were going on I was having Agent Castillo give me a
21 running commentary.

22 Q Did he give you a word-for-word translation?

23 A No.

24 Q What did he tell you?

25 MR. TODEL: Objection.

1 10

McMullan - direct

2 THE COURT: Sustained.

3 Q Without going into the substance of the conversa-
4 tion, can you tell us what was said?

5 MR. TODEL: Objection.

6 THE COURT: I will sustain the objection. I
7 don't think it can be readily answered without giving
8 us hearsay.

9 MR. LEVIN-EPSTEIN: Very well, your Honor.

10 Q Did there come a time when Miss Rodas and Mr.
11 Miranda arrived at the body shop?

12 A Yes.

13 Q What happened then?

14 A Miranda left the Rodas vehicle and entered the
15 body shop.

16 Q Did Miss Rodas go into the body shop?

17 A No, she stayed in her car.

18 Q Did there come a time during the course of your
19 reception of these conversations or anything over the trans-
20 mitting device, that you heard something in English that you
21 can recall?

22 A Well, when -- yes -- When she was sitting in front
23 of the V&J Auto Body, alone, she spoke in English to me.

24 Q What did she say?

25 A She said she had the package and she gave him the

1 11

2 money --

3 MR. TODEL: Objection, and may I have it stricken?

4 THE COURT: No. I think that it is sufficiently
5 connected. I will permit it. Overruled.

6 MR. LEVIN-EPSTEIN: Thank you.

7 Q Did there come a time when Orlando Miranda re-
8 turned to Miss Rodas' car?

9 A Yes.

10 Q What happened after that?

11 A Ye returned to her car, but he never got in. He
12 just leaned in. Then, he went back to V&J Auto Body, and Gloria
13 Rodas made a U turn and proceeded back down College Point Boule-
14 vard to Roosevelt Avenue, and Orlando Miranda, at that time,
15 left V&J Auto Body, and was about two or three cars behind her,
16 going down College Point Boulevard to Roosevelt Avenue.17 Q Did there come a time that you met with Gloria
18 Rodas directly following this surveillance?

19 A Yes.

20 Q Where was that?

21 A 57th Avenue and Junction Boulevard.

22 Q What happened when you met with Gloria Rodas at
23 that spot?24 A She had an attache case in the back seat of her
25 car. We opened it up, and there was an aluminum foil package in

1 12

McMullan - direct

2 there.

3 Q Did you see the package that was removed from the
4 attache case?

5 A Yes.

6 Q I show you what has been marked Government's
7 Exhibit 1 for identification, and I ask you if you recognize it?

8 A Yes.

9 Q What is it?

10 A This is the package that was removed from the
11 attache case in Gloria Rodas' car.

12 Q Is it in the same condition that you found it in
13 when you found it in Gloria Rodas' car?

14 A No.

15 Q What is the difference?

16 A The tinfoil was wrapped around it.

17 Q When this package was removed from the attache
18 case, did you handle it at all?

19 A I would say I did. I cannot specifically say, yes.

20 Q Did you perform a field test?

21 A Yes.

22 Q Describe for the jury the kind of field test it
23 was.

24 A As far as the chemistry, I don't know. It's a
25 cobalt thocyanate. It's a small vial. You crack the vial, put

1 13 McMullan - direct

2 a sample of the substance in it, and if it turns a light bluish
3 color, then it's a positive reaction that whatever you put in
4 there has cocaine.

5 Q What was the result of the field test?

6 A It turned the required color, and it was a posi-
7 tive test for cocaine.

8 Q Did there come a time after you performed the
9 field test when you returned the package to someone else?

10 A Well, the package -- I never took it. Agent
11 Schnakenberg was handling it.

12 Q In your presence?

13 A Right.

14 Q I direct your attention to the afternoon of March
15 25. Did you ultimately return to your office at the DEA head-
16 quarters?

17 A Yes.

18 Q Were you with anybody else?

19 A Agent Schnakenberg and Agent Dolan.

20 Q Do you know where the package was at that time?

21 A Yes.

22 Q Where was it?

23 A In Agent Schnakenberg's possession.

24 Q Was anything done with the package in your pres-
25 ence at DEA headquarters?

14

McMullan - direct

A It was initialed, and that was it.

Agent Schnakenberg and Agent Dolan -- I instructed them to heat-seal it and put it in the DEA vault.

Q Who has access to the DEA vault?

A The Regional Director of DEA and the Custodian of Evidence.

Q Did there come a time on March 26, 1974, the next day, when you saw the same package again?

A Yes.

Q Where was that?

A It was in my office at 57th Street.

Q That's the Group 33 office?

A Yes.

Q What did you do with the package then?

A I put it in my safe.

Q Who has access to your safe?

A Myself and my assistant.

Q Did there come a time on March 28 when you saw the package again?

A Yes.

Q When was that?

A At DEA -- my Group -- We opened the safe and gave it to Agent Schnakenberg.

Q Had the package ever been removed from your safe

1 15 McMullan - direct

2 between the 26th and 28th?

3 A No.

4 Q It was always in your custody?

5 A Yes.

6 Q In the sealed condition that Agent Schnakenberg
7 had placed it in?

8 A Yes.

9 Q Directing your attention to yesterday, September
10 24, 1974, did there come a time when you saw this package again?

11 A Yes.

12 Q When was that?

13 A Special Agent Schnakenberg came in and delivered
14 it to your office.

15 Q In your presence?

16 A Yes.

17 Q And after yesterday, during the period of time
18 where it was in your custody in my office -- What did you do
19 with it last night after you left my office?

20 A Went to 57th Street, DEA, and put it in the vault.

21 Q In your safe?

22 A In our safe, yes.

23 Q This morning when you went to your office, did
24 you have occasion to see the package again?

25 A Yes.

1 16

McMullan - direct

2 Q When was that?

3 A Approximately 7:30, 8:00 o'clock.

4 Q When you removed it from the safe?

5 A Yes.

6 Q What did you do with it when you removed it from
7 your safe?

8 A Gave it to Agent Schnakenberg.

9 Q Did you accompany Agent Schnakenberg?

10 A Yes.

11 Q What was done with the package then?

12 A It was brought to your office.

13 Q And delivered to me?

14 A Yes.

15 Q Did there come a time during the course of the
16 period between March 25 and March -- and today, September 25,
17 when that package was subjected to a chemical analysis?

18 A Yes.

19 Q You didn't perform the chemical analysis did you?

20 A No.

21 Q That analysis was performed by -- Do you know whom?

22 A Edward Manning.

23 Q Who is a Chemist for the Drug Enforcement Administra-
24 tion?

25 A Yes, he is.

A 83

McMullan - direct

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN: (continuing)

Q I direct your attention now, backstepping a bit, Agent McMullan, to April 2, 1974. Were you working in your office at the DEA that day?

A Yes.

Q Did you have occasion on April 2nd, 1974, to meet with Gloria Rodas?

A Yes.

Q In your office?

A Yes.

Q What happened with Miss Rodas in your office on April 2?

A She was given \$4,000 official advance funds.

Q Why was she given \$4,000?

MR. TODEL: Objection.

THE COURT: Overruled.

A She owed Orlando Miranda \$4,000. She bought ten ounces of cocaine at a \$1,000 an ounce, plus he gave her a half ounce for free --

THE COURT: We are getting a lot more than "why."

Q You testified she was given \$6,000?

A Yes.

Q What was the function of the \$4,000 on April 2?

2

McMullan - direct

A It was the balance of the payment.

Q Did you work on surveillance on that day?

A No, I did not.

Q Now, I'm not sure whether I asked you this question or not before, Agent McMullan, but following your meeting with Gloria Rodas on the afternoon of March 25, after the time that you say she traveled to the V&J Body Shop, and you met with her at the designated spot, did there come a time when Gloria Rodas was searched in your presence at that time?

A Yes.

Q What was the result?

A No contraband on her or in the vehicle, other than that package in her attache case.

Q During the course of this investigation, Agent McMullan, you have testified, and others have testified, that there has been the use of what has been called a Kel device or transmitter.

Now, when a Kel device is used, is a tape recording automatically made of that transmission?

A No.

Q Can a tape recording be made of that transmission?

A Yes.

Q Why is it sometimes not made?

MR. TODEL: Objection, your Honor.

1 3

McMullan - direct

2

THE COURT: Overruled.

3

A It is at the discretion of the Agent. Sometimes

4

an Agent or an Informant will wear a Kel device and go into a

5

bar to be seen, and it is used for protection in that instance.

6

Q What do you mean by "protection"?

7

A We can hear what is going on to protect the Agents.

8

A lot of Agents and Informants are given a lot of

9

money --

10

THE COURT: You have said enough now.

11

MR. LEVIN-EPSTEIN: I have no further questions,

12

your Honor.

13

THE COURT: You may cross-examine.

14

CROSS EXAMINATION

15

BY MR. TODIL:

16

Q Agent McMullan, were you the Group Supervisor in

17

charge of the arrest of Mrs. Rodas when she was arrested in

18

January of 1974?

19

A I am familiar with the arreest. I was not in

20

New York at the time of her arrest.

21

Q When for the first time did you meet Mrs. Rodas?

22

A February of 1974.

23

Q Pardon?

24

A February of '74.

25

Q February of '74. What part of February?

1 4

2 A The latter part.

3 Q I see.

4 And did you have a conversation with her at that
5 time?

6 A Yes.

7 Q And who was present when you had that conversa-
8 tion?9 A I believe Agent Schnakenberg and possibly Agent
10 Docchiccio.

11 Q Was anyone else present?

12 A Not that I recall.

13 Q Was a girl who had been called Georgie present?

14 A Oh, yes.

15 Q And what did you say to them with reference to
16 their cooperation with the Government?17 A At the point that I spoke to them, they had al-
18 ready shown that they would cooperate with the Government.19 Q In other words, they had started to cooperate
20 before February 28th; is that correct?21 A Well, they had given their intentions that they
22 would cooperate. I don't know to what extent they had cooper-
23 ated.24 Q But as far as you, as a Group Supervisor, and
25 working with the Drug Enforcement Bureau, you knew they had

1 5

McMullan - cross:

2 started or given their intention of cooperating; is that cor-
3 rect?

4 A Yes.

5 Q And there is a question that was put to you right
6 near the end of your examination with reference to the Keel
7 transmitter --

8 A Kel.

9 Q (continuing) -- Kel transmitter -- where you
10 said that it is usually at the discretion of the Agents as to
11 whether or not a tape should or should not be made?

12 A Yes.

13 Q What goes into making that discretion? You were
14 in that car at that time; correct?

15 A Yes.

16 Q What discretion were you utilizing at that particu-
17 lar time?

18 A What date is this, now?

19 Q March 25.

20 A There was a tape made on the 25th.

21 Q Of March?

22 A Yes.

23 Q Where is it?

24 A I have no idea.

25 Q You mean there's no one in the Department, in your

A 88
McMullan - cross

6

Department, who knows where that tape is?

A That is correct.

Q Does anyone, as far as you know, does anyone in the United States Attorney's office know where the tape is?

A As far as I know, no one knows where it is.

Q But there was a tape made?

A Yes, there was. In fact, the clearest of all of them.

Q Now, on March 25, 1974, when Miss Rodas came to your office and you gave her \$6,000, I think you said you gave it to Agent Schnakenberg and Mrs. Rodas --

A Well, we were together in the same room, yes.

Q Who did you give the money to?

A Rodas.

Q You didn't give it to Schnakenberg; is that correct?

A There were certain procedures we had. Schnakenberg and I counted the money together, and if I physically gave it to Rodas, I don't know. We both were there.

Q You mean you don't know if Mr. Schnakenberg gave the money to --

A That's not what I said.

I said I don't know if I physically gave it to her or Schnakenberg physically gave it to her.

A 89

1 7

McMullan - cross

2 Q I see.

3 And I think there's been some testimony in this
4 trial that Mrs. Rodas was searched; is that correct?

5 A Yes.

6 Q And I think there was a female Agent who did the
7 searching; correct?

8 A On one of the occasions.

9 Q And when Mrs. Rodas was at your office, was
10 Georgie there, too?

11 A Not -- She was there, yes, but not at all times,
12 though.

13 Q But when Mrs. Rodas left your office and went to
14 her automobile, Georgie went with her in her automobile; is
15 that correct?

16 A Yes.

17 Q Had Georgie, by any representatives of the Drug
18 Enforcement Bureau, been searched on that day?

19 A To my knowledge she was not.

20 Q And then you proceeded in your car with a number
21 of other Agents to follow Mrs. Rodas and Georgie; is that cor-
22 rect?

23 A Yes.

24 Q And they both entered the Jaguar Bar?

25 A Yes.

McMullan - cross

Q And you stated about ten minutes later they came out, or someone came out?

A Gloria Rodas came out.

Q That was ten minutes later?

A Well, it was approximately ten minutes later.

Q And you don't know what happened in that bar, do you?

A No, I do not.

Q Was a girl named Toni there, do you know?

MR. LEVIN-EPSTEIN: Objection.

He just testified that he didn't know what happened.

THE COURT: He can ask individual questions.

A I don't know if she was there or not.

Q Then you followed Mrs. Rodas and Mr. Miranda as they went down Roosevelt Avenue; correct?

A Yes.

Q And you say that was the clearest that you had heard the tape in a long time?

A Yes --

MR. LEVIN-EPSTEIN: Objection. That's not what he said.

THE COURT: Mr. Todel added the words, "in a long time."

McMullan - cross

THE WITNESS: Yes.

THE COURT: What is the answer?

THE WITNESS: Of the tapes I took at the Jaguar Lounge, that is the clearest.

Q Usually -- There's been some testimony that usually there's a lot of interference sometimes in the course of taping a conversation; is that correct?

A Yes.

Q What type of interference would you know of from your experience?

A Static.

Q What would that be caused by?

A It could be caused by anything.

Q For example, Roosevelt Avenue, if I recall, from the Jaguar Lounge to College Point Boulevard is under an el structure?

A Yes.

Q In fact, there's a railroad train going along that point?

A Yes, there is.

Q Now, there came a time on April 2, 1974, that you saw Miss Rodas at your office again; is that correct?

A Yes.

Q And did you give her any money at that time?

10

McMullan - cross

A \$4,000.

Q Who did you give the money to?

A Gloria Rodas.

Q Was Agent Schnakenberg there at the time?

A Yes.

Q Was anyone else there at the time?

A At that time, no.

Q Was Mrs -- Was this woman called George at the Drug Enforcement Bureau on that day?

A She was there, but she was not there when the money was given.

Q But when Mrs. Rodas left your office, Georgie went with her in the automobile; is that correct?

A Yes, sir.

Q You didn't follow thereafter; is that correct?

A I wasn't on that surveillance, no.

Q There came a time on May 31, 1974, that the defendant was arrested; is that correct?

a Yes, sir.

Q And at what time of the morning was he arrested, if you know?

A Approximately 4:00 or 5:00 A.M.

Q Were you present when he was arrested?

A Yes.

1 11

McMullan - cross

2 Q And you took him into custody?

3 A Yes.

4 Q Who else was present at the time?

5 A Agent Schnakenberg and Agent Farrone.

6 Q And then you went where?

7 A 555 West 57th Street.

8 Q How long was he over at your office on 57th
9 Street?

10 A Until he was arraigned the next morning.

11 Q And when or for how long a period was he ques-
12 tioned by you and Agent Schnakenberg or any other Agent?

13 MR. LEVIN-EPSTEIN: Objection.

14 THE COURT: Overruled.

15 A Approximately an hour or so.

16 Q When did you arrive at your office?

17 A I would say it is a half an hour ride after he
18 was arrested.19 Q That means you would have gotten there about 5:30,
20 6:00, around that time?

21 A Yes.

22 Q And was he questioned at the time of the arrest
23 in the automobile in which you were bringing him to the 57th
24 Street office?

25 A He was not questioned, no.

12

Q When you arrived at the Drug Enforcement Bureau on 57th Street, was he questioned at that time?

A He was processed first.

Q Then was he questioned?

A Yes.

Q Did he deny each and every statement --

MR. LEVIN-EPSTEIN: Objection. Hearsay.

THE COURT: No. I'll let him say what the defendant said.

Q With reference to any transactions between Mrs. Rodas and himself --

MR. LEVIN-EPSTEIN: May we have a side bar?

THE COURT: All right.

(Side bar discussion.)

MR. LEVIN-EPSTEIN: If it's going to be a denial of guilt, your Honor, then it is not an admission in exception to the hearing rule.

Let Mr. Todel put his client on the stand.

MR. TODEL: There may come a time when it becomes necessary.

THE COURT: If he asks part of it, then the whole thing may come in, and there may be a question of false exculpatory statements.

MR. LEVIN-EPSTEIN: Now Mr. Todel will be eliciting

13

McMullan - cross

from an Agent of the Government statements that his client made, and Mr. Todel has the best evidence here. He has in the courtroom and available, his client, the defendant.

It is not a question of self-incrimination, because Mr. Todel is apparently bringing out a complete denial of the events as they happened.

MR. TODEL: I have no objection -- I will withdraw the question at this time.

(Conclusion of side bar discussion.)

(The following held in open court.)

CROSS EXAMINATION

BY MR. TODEL: (continuing)

Q Mr. McMullan, you questioned him with reference to the facts of March 25, 1974 -- Yes or no?

A Yes.

Q You questioned him with reference to the facts of April 2, 1974?

A Yes.

Q In fact, there came a point where one of the Agents said, "Well, what are we wasting our time for with this man?" --

MR. LEVIN-EPSTEIN: Objection --

Q (continuing) -- Was that stated?

MR. LEVIN-EPSTEIN: Objection.

THE COURT: No. I will let him answer.

Did any Agent state what Mr. Todel just said?

THE WITNESS: I don't know if they said it in exactly the same words Mr. Todel did, but I am sure it was said, yes.

Q In fact, one of the Agents said, "Let me bounce him around a bit," but you told him not to do that? Did that occur?

MR. LEVIN-EPSTEIN: Objection.

THE COURT: Sustained.

MR. LEVIN-EPSTEIN: I move that be stricken from the record entirely.

THE COURT: Yes. The jury will please disregard it.

Q What did Agent Schnakenberg say to Mr. Miranda in the course of the questioning?

MR. LEVIN-EPSTEIN: Objection.

A I think you ought to ask Agent Schnakenberg that.

MR. LEVIN-EPSTEIN: Exactly the objection.

Mr. Todel had an opportunity to question Agent Schnakenberg when he was on the stand concerning that and he chose not to.

THE COURT: All right. No comments.

Any redirect?

15

McMullan -

MR. LEVIN-EPSTEIN: No, your Honor.

THE COURT: All right. You may step down.

MR. LEVIN-EPSTEIN: Oh, wait, wait. I do have one or two questions, your Honor.

(Pause)

MR. LEVIN-EPSTEIN: No. I have no further questions.

THE COURT: All right.

Step down, Agent McMullan.

MR. TODEL: May I recall Agent Schnakenberg?

MR. LEVIN-EPSTEIN: Your Honor, the Government called Agent Schnakenberg, and Mr. Todel had ample opportunity to examine the witness in any area he wished.

THE COURT: I may let him do it later on, but let's proceed with the Government's case.

(continued on next page.)

(Reporter relieved by Ira Rubenstein.)

fact that there is no 3500 material from this particular agent, and that there is no tape although there was a tape, I move that his testimony be suppressed with reference to that conversation.

THE COURT: We will wait and hear what the testimony is with respect to the loss of the tape.

Section 3500 does not require that there be statements made by agents. It merely requires that any statements be turned over.

(In open court.)

MR. LEVIN-EPSTEIN: May it please the Court?

THE COURT: Proceed.

MR. LEVIN-EPSTEIN: Thank you.

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Would you state your full name for the jury.

A James Castillo.

Q What is your occupation, Mr. Castillo?

A I am a special agent with the Drug Enforcement Administration.

Q How long have you been so employed?

A Approximately 13 months.

Q Prior to that time were you employed by the Government?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q In what capacity?

A I was employed in various capacities with the United States Treasury Department, Bureau of Customs.

Q Did there come a time during the course of your employment with the Bureau of Customs where that Bureau was merged with then what was the Bureau of Narcotics and Dangerous Drugs?

A Yes, sir.

Q Did you become an agent of the Drug Enforcement Administration as a result of that merger?

A No, sir.

Q Would you explain how you became an agent, sir.

A I applied for the position of Special Agent at the time the Bureau of Narcotics and Dangerous Drugs was still in existence and I was accepted by them and I was called onto the job approximately 13 months ago.

Q What's the full duration of your service with the United States Government?

A Approximately four years.

Q During that time, approximately how much of your duties have been devoted to the enforcement of the Federal Narcotics laws?

A For about the same period of time.

1
2 Q Thank you.

3 Directing your attention to March 25th of 1973, were
4 you working on that day?

5 A Yes, sir.

6 Q Where?

7 A I was working in the Drug Enforcement Adminis-
8 tration on surveillance.

9 Q Where were you specifically while you were on
10 surveillance?

11 A I was in a Government vehicle.

12 Q Was there anyone else in the car with you?

13 A Yes.

14 Q Who else was in the car with you?

15 A Group Supervisor McMullan, Special Agent
16 Schnakenberg, Special Agent Dolan and myself.

17 Q The four of you?

18 A Yes, sir.

19 Q Where was this Government vehicle?

20 A I don't understand that question.

21 Q Let me rephrase it this way: Was the surveil-
22 lance that you testified to carried out from this Government
23 vehicle?

24 A Yes, it was.

25 Q Did you travel in the Government vehicle as part

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

of the surveillance?

A Yes, we did.

Q What were you surveilling?

A Miss Rodas.

(Continued on next page.)

1
2 DIRECT EXAMINATION

3 BY MR. LLWIS-EPSTEIN (Cont'd):

4 Q The witness who testified here last week.

5 A Yes.

6 Q Where was he when you were surveilling her?

7 A In another vehicle.

8 Q Where was your vehicle in respect of herself?

9 A We were behind her.

10 Q As she was travelling?

11 A Correct.

12 Q At what point did you begin the surveillance
13 of Mrs. Rodas's vehicle?

14 A We began the surveillance at the 57th Street
15 office in Manhattan.

16 Q From leaving the 57th Street office of DEA,
17 where did you follow Mrs. Rodas's vehicle to?

18 A We followed her to the Jaguar Lounge in Queens.

19 Q Did there come a time when she arrived at the
20 Jaguar Lounge?

21 A Yes, sir.

22 Q During the course of this travelling with you
23 in the Government vehicle and Mrs. Rodas in her vehicle under
24 surveillance, were you in radio contact at least in terms of
25 reception to Mrs. Rodas's vehicle?

2

Castillo - direct

1

2

A Yes.

3

Q By what means was that?

4

A By a Kel transmitting setup that she had on her.

5

Q You were able to overhear what she said then?

6

A That's correct.

7

Q Did there come a time after arriving at the

8

Jaguar Lounge where Mrs. Rodas left the Jaguar Lounge?

9

A Yes.

10

Q Was she accompanied by anyone?

11

A Yes, she was.

12

Q Who was she accompanied by?

13

A She was accompanied by the defendant.

14

Q Orlando Miranda?

15

A That's correct.

16

Q Did there come a time when Mrs. Rodas and

17

Mr. Miranda entered her vehicle on March 25th?

18

A Yes.

19

Q Were you able to overhear conversation from them

20

at that point?

21

A Yes.

22

Q Did they leave the Jaguar Lounge in her car?

23

A Yes.

24

Q Where did they drive to?

25

A They drove to -- they proceeded east, I believe.

3 Castillo - Direct

and they drove to the B & J Auto Repair Shop.

Q During the period of time, Agent Castillo, between the moment that Mrs. Roadas and Mr. Miranda in her vehicle left the Jaguar Lounge and arrived at the B & J Body Shop, did you overhear conversation between them over the Kel transmitting device?

A Yes.

Q In what language were they --

A In Spanish.

Q Are you conversant in the Spanish language?

A Yes.

Q Do you speak it fluently?

A Yes.

Q Did you overhear the conversation in the Spanish language?

A Yes, I did.

Q Can you tell the Jury and the Court what happened and what you overheard on that transmission?

MR. TODEL: If the Court please --

THE COURT: Mr. Todel made an objection at the side-bar and I think you should bring out the question whether it was taped and what happened to the tape.

Q During the course of your receiving these transmissions in the Government vehicle, was there a tape recorder

A 105

4 Castillo - direct

operating in your vehicle?

A Yes.

Q Was a tape recording made of these transmissions?

A Yes.

Q Was this tape recording maintained as part of this investigation?

A Yes.

Q Do you know what has happened to that tape recording?

A Yes.

Q Can you tell the Jury what happened to it?

A The tape recorder was returned to the 57th Street office, at which point I heard it for approximately three minutes and that's the last I saw of it when I heard it for three minutes.

I was asked to get something for another case that we had going that night and subsequently the tape has been lost.

Q Nobody knows where it is?

A That's correct.

Q Have you made a search for the tape?

A I have.

Q Have other agents in your presence made a search for this tape?

5

A Yes.

Q Have these searches been made pursuant to directives by yourself and your superiors?

A Yes.

Q What has been the result of these searches?

A No one has found the tape. It was lost.

Q But you were present in the car while this tape recording was being made?

A Correct.

Q You did overhear everything that went on to that tape; is that correct?

A Correct.

Q I ask you again, can you tell the Jury and the Court what was said during the course of this transmission between the defendant Orlando Miranda and the witness Gloria Rodas --

MR. TODEL: If the Court pleases, I renew my objection.

THE COURT: Well, I think the law on this matter is if the tape was deliberately destroyed, the witness should not be permitted to testify about it. If the tape has been lost through the negligence of the Government and I suppose there is negligence if a piece of evidence has disappeared, the conversation

A 107

6

Castillo - direct

may be the subject of testimony by somebody who heard it, but the Jury can consider, in judging Mr. Castillo's credibility, the extent to which the loss of the tape may affect either the question whether there was ever such conversation or the contents of the conversation to the extent that the witness may be accurate or inaccurate in saying it.

I will overrule the objection and you have an exception.

MR. TODEL: If the Court pleases, may I, on voir dire, before this witness testifies, question him with reference to the lost tape?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TODEL:

Q When did you return to the Drug Enforcement Bureau office on March the 25th?

A At approximately 6:00 p.m. that night, 5:30, 6:00.

Q With whom were you when you returned to the Drug Enforcement Bureau?

A I was with the other surveilling agents that I mentioned before.

Q That was Agent McMullan, Schnakenberg and

7

Castillo - voir dire

Mr. Dolan?

A As well as a few other agents,, if I recall,
Special Agent Tully was also present.

Q What is the procedure when a tape is made by
the Drug Enforcement Bureau as to recording that tape to
memorandum?

A The tapes are usually transcribed by an inter-
preter and they are on paper.

Q That was done in this case?

A No, sir, it was not.

Q When the tape is taken off the tape recorder,
are there any notations made on the tape?

A The notations, sir, are put on prior to the
recordings, the date, the time.

Q And did you or anyone in the Drug Enforcement
Bureau make a notation as to the time in any record of
the Drug Enforcement Bureau as to when that tape was put on
that particular tape recorder --

MR. LEVIN-EPSTEIN: The question is: Did this
witness --

THE COURT: Does he know whether anything was
done?

THE WITNESS: I really don't know, sir.

Q When a tape recorder is removed from a tape (sic),

8 Castillo - voir dire

is there any record made by the Drug Enforcement Bureau that such a tape recording has been removed from a tape recorder?

A No.

Q Was there ever a record made on March 25, 1974, as to the fact that this tape recorder -- tape recording of this conversation was missing?

A A written statement to that effect?

Q Yes, a memorandum in the regular course of business.

A I don't know.

Q Who would know?

A I would imagine that the group supervisor would know, Group Supervisor McMullan.

Q When for the first time were you asked to look for this tape by the U. S. attorney's office?

A The U. S. attorney instructed me to do so approximately two weeks ago.

(Continued on next page.)

nc 2 VOIR DIRE EXAMINATION

3 BY MR. TODEL: (Cont.)

4 Q And who was the U. S. Attorney?

5 A Mr. Levin-Epstein.

6 Q Was that the first time that you looked for this
7 tape?

8 A No, sir, it was not.

9 Q Was that the first time since March 25, 1974
10 that you looked for the tape?

11 A No, sir, it was not.

12 Q When was the last time prior to two weeks ago
13 that you looked for this tape?

14 A I looked for the last week again --

15 THE COURT: Before Mr. Levin-Epstein asked you,
16 when did you last look?

17 THE WITNESS: I again looked for the tape last
18 Wednesday.

19 THE COURT: Before two weeks, when did you last
20 look?

21 THE WITNESS: Oh, I don't recall exactly but at
22 the time -- I would say approximately three months ago --
23 I don't recall exactly when I looked for it.

24 BY MR. TODEL:

25 Q Was there any record made by your group

2

Castillo - voir dire

supervisor, if you know, that this tape was missing, yes or no?

A Written or oral?

Q Written.

A I do not know.

Q Who took the tape recording off the tape recorder on March 25?

A I do not know.

Q You didn't take it off, did you?

A No, sir, I did not.

Q Was it Agent McMullan, if you know?

A I do not know.

Q Was it Agent Schnakenberg?

A I don't know who took it off the machine.

Q Who gave you the tape on March 25th, 1974?

A It was in the recorder.

Q Was the tape recording removed from the tape recorder -- was the tape recording --

A Obviously so, due to the fact that I saw the tape recording device and the tape was no longer in it, so it had to be taken out.

Q Did Agent Schnakenberg take it out?

A I stated that I do not know.

MR. LEVIN-EPSTEIN: The question has been asked numerous times.

3 Castillo - voir dire

THE COURT: Overruled.

Q Agent Castillo, when you returned to the Drug Enforcement Bureau, you say it was about 6:00 o'clock on March 25th?

A Approximately.

Q Who had the tape recorder?

A I did, sir.

Q You took it with you?

A That's correct.

Q You carried it somewhere?

A Yes, I did.

Q Where did you carry it?

A To the office of Group Supervisor McMullan, the 57th Street Headquarters.

Q The last time you saw -- did you actually see the tape recording itself, is this a cassette?

A Yes, sir, it is.

Q Did you see the cassette?

A Yes, sir, I did.

Q And it was in the tape recorder?

A Yes, sir, it was.

Q And when you turned around at some later point you didn't see the tape?

A What occurred was I listened to the cassette

4

Castillo - voir dire

after returning to Group Supervisor McMullan's office, I left and that was the last time that I heard and saw the tape.

MR. TODEL: If the Court pleases, I renew my objection at this time. I think that further witnesses would have to be called before there could be any testimony by this witness, your Honor.

THE COURT: No, I will adhere to my ruling. I think there could be more witnesses, but that's a matter of the weight of the evidence.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

THE COURT: They witness may answer.

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN: (Cont.)

THE COURT: Let me ask one question:

You say you heard it for three minutes; was it that night?

THE WITNESS: Immediately when I returned to the office.

THE COURT: I see. Go ahead.

Q Agent Castillo, before the voir dire by Mr. Todel, I believe the last question I asked you was this:

Would you please tell the jury and the Court what -- what, during the course of that tape where you overheard the conversation, did Mrs. Rodas say and what did the

Castillo - voir dire

defendant Orlando Miranda say?

A The defendant spoke and said that he had the package. The woman said that she didn't have the entire amount of money so she could only take part of the package -- she stated that she had \$6,000.

The defendant said that he couldn't split the package up and that she should have the complete package and he trusted her for the balance of the amount which they had agreed upon.

He also stated that he would open the package so she could examine it. She said no, she trusted him and asked him to put it in a case that she had in the back seat. That was the -- that was the essence of the conversation.

Q Did there come a time after this conversation or during this conversation that you had occasion to translate from the Spanish language, out loud, what was being said?

A Yes, sir.

Q Did you do this verbatim or did you do it in substance, what was being said?

A I did it in substance.

Q For what purpose were you saying out loud what was coming over the wire?

A So the other surveilling agents would know what was occurring during the surveillance, my supervisor included.

6

Castillo - direct

1

2

3

Q As you testified before, the other agents in the car with you were whom?

4

5

6

A Special Agent Schnakenberg, Group Supervisor McMullan was there and Special Agent Dolan was also there in the vehicle.

7

8

MR. LEVIN-EPSTEIN: I have no further questions of this witness.

9

10

11

THE COURT: Cross-examination, Mr. Todel?

CROSS-EXAMINATION

BY MR. TODEL:

12

13

Q You stated that you have been with the Drug Enforcement Bureau for 13 months?

14

15

16

17

18

19

20

21

22

23

24

25

A Correct.

Q Prior to that you were with the Customs Bureau?

A Correct.

Q What did you do with them?

A I was Customs Security Officer or Sky Marshal, if you will. Also a Customs Court Officer and a Customs Inspector.

Q When for the first time did you ever meet Agent Schnakenberg?

A I was introduced to Agent Schnakenberg when I arrived from training and I was assigned to the group in which he works.

1 7

Castillo -

2 Q I see.

3 In other words, you have known Agent Schnakenberg
4 for the past 13 months since you have been employed by the
5 Drug Enforcement Bureau?

6 A No, slightly less, for approximately 11 months.

7 Q Was he one of those -- like a partner of yours,
8 that he'd train you?

9 A He was a senior agent in the group to me.

10 A I see.

11 Did you go out on various investigations with
12 him?

13 A Yes, sir, I did.

14 Q You went out on a number of them; is that
15 correct?

16 A Yes.

17 Q Was Agent McMullan your supervisor?

18 A Yes.

19 Q Did he train you, too?

20 A Yes.

21 Q You mentioned an Agent Dolan?

22 A Yes.

23 Q Was he also in this particular group?

24 A Yes, he is.

25 Q How long did you know Agent Dolan?

1 8

Castillo -

2 A I know Agent Dolan, he came into the group, I would say
3 I knew him for three, four months.

4 Q Now, Agent Castillo, from the point of time
5 that the tape was missing, that would be on March 25 --
6 sometime on March 25; is that correct?

7 A Correct.

8 Q Did you make any record or memorandum of the
9 conversation that you overheard?

10 A No, sir, I did not.

11 (continued next page)

12 lws.

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2 Q Did, if you know, Agent McMullan -- was Agent
3 McMullan notified of the fact that this particular tape was
4 missing?

5 A You're referring, I believe, to Group Supervisor
6 McMullan?

7 Q That's right.

8 A Yes. In fact, I think he informed me that the
9 tape was missing. I didn't inform him.

10 Q When did he inform you that the tape was missing?

11 A I believe it was a day or two later, from the
12 25th, so I would say it was between the 26th and 27th, if I
13 recall correctly.

14 Q Did you discuss the missing tape with Agent
15 McMullan?

16 A Yes sir. At that time --

17 Q Yes or no?

18 A Yes.

19 Q Did you discuss the missing tape with Agent
20 Schnakenberg?

21 A Yes sir, I did.

22 Q You stated that Agent McMullan and Agent Schnaken-
23 berg and Agent Dolan were in the automobile and you stated you
24 were translating what you overheard; is that correct?

25 A That's correct.

1
2 Q Do you know whether or not Agent Schnakenberg
3 made any memoranda as to what you had told him occurred?

4 A I don't know, sir.

5 Q Have you seen any memoranda made by Agent
6 Schnakenberg with reference to the conversation that you stated
7 that you relayed to Agent Schnakenberg and Agent McMullan and
8 Agent Dolan?

9 A No sir.

10 Q Have you seen any memoranda by group supervisor
11 McMullan with reference to any conversation which you had told
12 them about that you had overheard in that automobile?

13 A No sir, I have not.

14 Q Would you say the same thing with reference to
15 Agent Dolan?

16 A That's correct.

17 Q In other words, a day or two after that alleged
18 tape was missing or lost, no one in the Drug Enforcement
19 Bureau, as far as you know, made a record as to what you had
20 told them; is that correct?

21 A That's correct, sir.

22 Q You stated that you listened for the first three
23 minutes of this tape; is that correct?

24 A Approximately.

25 Q What time did you leave the Drug Enforcement

Bureau that afternoon when you were surveilling Mrs. Rodas?

A It was in the afternoon. I would say about 3:00, 4:00 o'clock.

Q Was she -- did she go into the car alone?

A From 57th Street, sir?

Q Yes.

A No sir, I don't believe so.

Q Who went in with her?

A I believe a girlfriend of hers, Georgie.

Q Girlfriend or someone who also was working for the Drug Enforcement Bureau?

A She was also working for the Drug Enforcement Administration.

Q That's Georgie who had been convicted of a drug offense some time -- she had been arrested in January of 1974; is that correct?

MR. LEVIN-EPSTEIN: Objection.

THE COURT: Overruled.

A Yes, sir, she had.

Q And she is the one who received a suspended sentence also; is that correct?

A I don't know what her -- the outcome was to the trial.

Q Was there any conversation between Georgie and

1
2 Gloria Rodas on the tape recorder?

3 A No, sir.

4 Q None at all?

5 A No sir.

6 Q Who controlled the tape recorder?

7 A I did, sir.

8 Q When did you start the tape recorder?

9 A When Mrs. Rodas was going into the Jaguar Lounge.

10 Q How long had she been in the Jaguar Lounge?

11 A Just for a few minutes.

12 Q Ten minutes? As Group Supervisor McMullan said?

13 A Even less, I believe. She was in there for just
14 a few minutes.

15 Q Did you overhear anything with reference to an
16 auto -- auto and body shop?

17 A During the conversation I did.

18 Q How long did that take?

19 A I don't understand your question.

20 Q All right. How long did the conversation take
21 place in the bar and grill, or in the Jaguar Lounge?

22 A Just a few minutes.

23 Q Was it three, four minutes?

24 A Yes, approximately.

25 Q Five minutes, six minutes?

1
2 A Yes, approximately. Three or four.

3 Q You spoke to Mr. Miranda at a later date; did
4 you not?

5 A Yes sir, I did.

6 Q Where did you speak to Mr. Miranda?

7 A I spoke to Mr. Miranda in Group Supervisor McMullan's
8 office at the 57th Street headquarters.

9 Q What did you say to Mr. Miranda and what did he
10 say to you?

11 A Mr. Miranda had been arrested at the --

12 MR. LEVIN-EPSTEIN: Your Honor, I'd like to ob-
13 ject at this point, only to the portion of the question
14 which goes to what Mr. Miranda may have said to the
15 agent, in respect of it being hearsay.

16 If Mr. Castillo is being asked what did he say
17 to the defendant, certainly that is proper.

18 THE COURT: No. I think defense counsel can bring
19 out both sides. The Jury don't have to accept what
20 Mr. Miranda said, but I will let it come in anyway.

21 A (Continuing) the conversation -- you want me to
22 continue?

23 Q Yes. What did you say to Mr. Miranda and what
24 did he say to you?

25 A I had told Mr. Miranda that he had been arrested

1 and that the Government had a solid case against him and
2 whether he wanted to give us information concerning any other
3 people that may have been involved with him in the narcotics
4 business.
5

6 Mr. Miranda told me that he was innocent, that
7 he was not involved in the narcotics industry and that he
8 didn't -- that he wanted to speak to a lawyer.

9 That was the essence of our conversation.

10 Q Before that he had spoken with Agent McMullan
11 and Agent Schnakenberg; is that correct?

12 A That's correct.

13 Q In other words, they had questioned him first?

14 A YES sir.

15 Q And you weren't present during that questioning;
16 were you?

17 A No sir, I wasn't.

18 Q Did you say anything that if he cooperated with
19 the Government, that he'd be able to go home?

20 A No sir, I never told him that.

21 Q Say anything about the question that there be
22 very little bail, if anything, on him?

23 A I never told him that.

24 Q What is the procedure when someone cooperates
25 with the Government, if you know?

MR. LEVIN-EPSTEIN: Objection as to irrelevancy.

What happened in this case is more pertinent.

THE COURT: No. I will let him answer, to the extent he knows.

A (Continuing) What I always tell the people who have been arrested, depends on the Court. I can't promise him anything at all. Usually it's favorable in the -- in the event that the person does cooperate, but we have no control of what the magistrate or the judges decide at all.

Q Did you know that when Gloria Rodas and her friend Georgie had been arrested, that they were able to go home the same day they were arrested?

A I don't know whether they went home on the same day that they were arrested.

Q Or the following day?

A I don't know.

(Continued on next page.)

Castillo - cross

CROSS-EXAMINATION

BY MR. TODEL (Cont'd):

Q When you told Mr. Miranda that the Government had a solid case against him, what did you tell him?

Specifically, what kind of a solid case did you tell him?

A As I recall, I had told him that a person that was working for us made a purchase while he was being surveilled -- that a surveillance was initiated at the time that he made the sale to her.

Q And did you tell him that you overheard the conversation between him and this person, this woman? Did you tell him that?

A I don't recall if I told him that, sir.

Q You don't recall?

A No, I do not.

Q In other words, you may not have told him that; is that correct?

A That's correct, sir.

Q And the solid case was that this woman said that she had purchased some cocaine from the defendant; is that correct?

A I had told Mr. Miranda that surveilling agents were there at the time when a purchase was made from him to

the woman.

Q You were one of the surveilling agents?

A I'm telling you, sir, what I told your defendant,
not --

Q Did you see anything happen while you were surveilling the defendant and Mrs. Rodas?

A In the vehicle that they were in?

Q Yes.

A I saw from time to time only during the surveillance.

Q Did you see anything happen in the car?

A No, sir, not --

MR. TODEL: No further questions of this witness.

THE COURT: Any redirect?

MR. LEVIN-EPSTEIN: I don't believe so, your Honor.

THE COURT: All right, you can step down.
Thank you.

(Witness excused.)

THE COURT: Next witness.

MR. LEVIN-EPSTEIN: The Government calls
Mr. Edward Manning.

THE COURT: Yes. Stand here, please.

The clerk is downstairs doing some other things.

3

Manning - direct

Raise your right hand, please.

EDWARD MANNING, called as a witness,
having been first duly sworn by the Court, testified
as follows:

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Mr. Manning, what is your occupation?

A I'm a forensic chemist, sir.

Q Are you employed?

A Yes, sir. I am. By the Drug Enforcement Administration.

Q During the course of your duties as a forensic chemist, what is your job?

A Basically, sir, it is analyze substances that are brought into the lab to determine whether or not they contain a controlled substance.

Q What is a controlled substance?

A I can give you a for-instance. Cocaine or heroin or marijuana.

Q Normally referred to as drugs or --

A Yes, sir.

Q What is your academic background?

A I have a B.S. in chemistry which I received in

1971.

Q How long have you been employed by the Drug Enforcement Administration, Mr. Manning, as a chemist?

A Approximately three years, sir.

Q During the course of this three years' employment, approximately how many analyses have you performed on questioned substances?

A Approximately 1,400, sir.

Q And during the course of those 1,400 analyses, have you had occasion to use numbers of different chemical tests?

A Yes, sir.

Q Are you fully familiar with each of these chemical tests?

A Yes, sir.

Q All right. Do you perform the same tests for each questioned substance?

A No, sir.

Q What specialized training have you received since joining either the Bureau of Narcotics and Dangerous Drugs or the Drug Enforcement Administration, as it is now known?

A Yes, sir. On first joining the Bureau, I received six months training on the identification of controlled

A 129
Manning - direct

1 5

2 substances.

3 Q And this was done by other chemists in the Drug
4 Enforcement Administration?

5 A Yes, sir, by a senior chemist.

6 Q Did this include both reading of literature
7 and practical instruction?

8 A Yes, sir, it did.

9 Q In the laboratory?

10 A That's correct, sir.

11 Q With real and feigned questioned substances?

12 A That's right, sir.

13 Q Have you ever testified as a witness in a crimi-
14 nal trial before?

15 A Yes, sir, I have.

16 Q Have you ever been qualified as an expert witness?

17 A Yes, sir.

18 Q Approximately how many times?

19 A At least 25, sir.

20 Q And each time you've been qualified as an
21 expert in what field?

22 A In forensic chemistry, sir.

23 Q Mr. Manning, I show you what has been marked as
24 Government's Exhibit 1 for Identification and I ask you if
25 you recognize it.

6

Manning - direct

A Yes, sir, I do.

Q Can you tell the Jury how you recognize it?

A Yes, sir. My signature appears in three places and my initials appear in three places.

Q Can you tell the Jury how your signature came to appear and your initials came to appear on Government's Exhibit 1?

A Yes, sir. I placed them on there. My signatures are on the outside portion, which gives the dates that I opened it and the weights.

Down the bottom there is a seal record on the inner portion of the plastic bags and the aluminum foil I just put my initials to show that I did have it in my possession.

Q What is the purpose of the sealed bags, as you've described them?

A It is a two-fold reason, sir. One is for -- be able to see what is inside and, second, is to keep a control on the drugs themselves. In other words, to know the weights.

Q When was the first time you saw Government's Exhibit 1 for Identification?

A It was on approximately the 30th of March, sir, 1974, when I received it from the vault.

7

Q What vault is that?

A That's our laboratory vault, sir.

Q Did there come a time after having received the contents of Government Exhibit 1 for Identification that you had occasion to perform certain chemical analyses on the contents?

A Yes, sir. I did perform analysis on the contents.

Q I show you what has been marked as Government Exhibit 2 for Identification, Mr. Manning, and I ask you if you recognize that.

A Yes, sir, I di.

Q What is Government's Exhibit 2?

A Well, the topportion of it is a report that the agents submitted to us, commonly called a BND-7.

The bottom part is a laboratory report, the section that I complete upon completion of my analysis.

Q And you completed the bottom portion of this report after having gotten a chemical analysis on this substance?

A That's correct.

Q As a result of performing this chemical analysis, do you have an opinion as to what the white powder depicted in that bag is?

8

Manning - direct

A Yes, sir, I do.

Q What is it?

A I found the powder inside this clear plastic bag containing a controlled substance, namely cocaine hydrochloride. Sugar was also present in the exhibit, sir.

Cocaine hydrochloride was on a quantitative measure was found to be 68.0 per cent.

Q What was the net weight of the substance itself? In other words, just the powder, how much of it was there?

A 283.51 grams, sir.

Q Are you familiar with the transposition between the metric system and ounces?

A Yes, sir, I am.

(Continued on next page.)

Manning - direct

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN: (cont.)

Q Is that approximately ten ounces?

A Yes, sir, it is.

Q After having completed your chemical analysis of this substance, and preparing Government's Exhibit 2, what did you do with the powder that you had analyzed?

A I returned it to its original container, sir. Namely, the plastic bag and the aluminum foil and inserted it inside this evidence bag and I sealed it and then returned it the vault, sir.

Q And what vault is that?

A That's the laboratory vault, sir.

Q Very well.

Your Honor, at this time I offer Government's Exhibits 1 and 2 for identification, in evidence.

THE COURT: Let me wait and see what cross-examination Mr. Todel may have.

MR. TODEL: May I?

MR. LEVIN-EPSTEIN: I have no further questions then, your Honor.

THE COURT: All right.

MR. TODEL: Please bear with me just a moment, your Honor.

THE COURT: Yes. Surely.

CROSS-EXAMINATION

BY MR. TODEL:

Q Do you know whether or not this package has been opened since you examined it?

A No, sir, it has not been.

Q Have you wrapped the foil around the particular package?

A No, sir. I believe when I received it the foil was wrapped around it but I try and give it so you can see the powder so when I put it back I separated the two of them, sir.

MR. TODEL: No further questions of this witness, your Honor.

THE COURT: All right. I'll receive Exhibit 1 in evidence.

MR. TODEL: May I approach the bench with reference to the receipt?

THE COURT: Yes.

(Side-bar discussion follows.)

MR. TODEL: If the Court please, I respectfully object to the admission on the grounds that I don't believe that there has been any testimony by any witness to the effect that this is the package which

1 3
2 the defendant is alleged to have given to Mrs. Rodas.
3 Mrs. Rodas has never at any time testified with
4 reference to whether or not the package the Government
5 is introducing is the package she received from the
6 defendant.

7 MR. LEVIN-EPSTEIN: Agent Schnakenberg testified
8 after identifying this package when it was marked as an
9 exhibit for identification that it was the same package
10 that he removed from the attache case.

11 He further testified that he placed it in the
12 Northeast Regional vault. That it was later removed
13 by Agent Kane. That Agent Kane then delivered it to
14 the Regional -- the laboratory vault.

15 Mr. Manning has just testified that he removed
16 it from the laboratory vault, tested it and replaced it.

17 THE COURT: Mrs. Rodas didn't testify that it
18 was the same package?

19 MR. LEVIN-EPSTEIN: No. Mrs. Rodas didn't
20 testify to it because Mrs. Rodas, as you recall,
21 the question was asked if she had ever handled. She
22 said it was removed from the attache case.

23 If the Court please, I will recall Mrs. Rodas
24 and have her testify.

25 THE COURT: I think it is sufficient identification,
Mr. Todel. You can argue about it but I believe

4
1
2 it's satisfactory.

3 MR. TODEL: Exception.

4 MR. LEVIN-EPSTEIN: Thank you, your Honor.

5 (In open court.)

6 MR. LEVIN-EPSTEIN: The Government's Exhibit 1
7 for identification, in evidence?

8 THE COURT: It will be received.

9 MR. LEVIN-EPSTEIN: And Exhibit 2?

10 THE COURT: Well, Exhibit 2, I'm not sure about.

11 MR. LEVIN-EPSTEIN: May I redirect then, your
12 Honor?

13 THE COURT: Well, the witness has testified
14 about it. I don't think you need the report to bolster
15 his testimony.

16 MR. LEVIN-EPSTEIN: I offer it as a business
17 record, your Honor, and I can rebut -- bring it out
18 that way, if the Court prefers.

19 MR. TODEL: I most respectfully object --

20 THE COURT: No. I think Exhibit 1 is what is
21 significant.

22 MR. LEVIN-EPSTEIN: Very well, your Honor.

23 THE COURT: I think it's -- even it's a business
24 record, it's sort of prior recollection recorded.

25 MR. LEVIN-EPSTEIN: It's not imperative.

5

THE COURT: I don't think it comes within any exception. Exhibit 1 will be received.

MR. LEVIN-EPSTEIN: Thank you, your Honor.

THE CLERK: Exhibit 1, previously marked for identification is now received in evidence.

(So marked.)

THE COURT: All right.

You can step down, Mr. Manning.

THE WITNESS: Thank you, your Honor.

THE COURT: Is there other testimony for the Government?

MR. LEVIN-EPSTEIN: Your Honor, may we approach the bench briefly?

THE COURT: All right.

(Side bar follows.)

MR. LEVIN-EPSTEIN: Your Honor, the Government intends at this time to rest its case. However, prior to resting the Government would like to inform the Court and MR. Todel that there are certain witnesses to the events that have been testified to already who it is not the intention of the Government to call.

However, I would provide Mr. Todel with this list as I provide the Court and if Mr. Todel wishes to call them the Government will make them perfectly

1 Georgie, Miss Rodas stated that they cannot or will
2 not tell. I do not know which one it is.

3 MR. LEVIN-EPSTEIN: I do not either.

4 THE COURT: They stated they do not know.

5 MR. LEVIN-EPSTEIN: They stated that they have
6 no information that they want to give me as to
7 Toni. I do not know how to interpret that.

8 THE COURT: All right, let us take a recess for
9 Mr. Todel to speak to Georgie. We will resume in
10 15 minutes.

11 (Recess taken.)

12 THE COURT: Have I any report on Georgie?

13 MR. TODEL: I spoke to Georgie, your Honor.
14 Although it is my belief that she knows where Toni
15 is and knows Toni's last name, she wouldn't give the
16 information.

17 THE COURT: Yes.

18 Are you going to call her?

19 MR. TODEL: I do not think she would add any-
20 thing at this particular time to the trial, because
21 I feel that I would have to do further investigation
22 to determine whether or not I would use her at this
23 time.

24 By the way, at first when I entered Mr.
25 Levin-Epstein's office Miss Gloria Rodas was with her

1
2 The surprise was that until the first day of
3 this trial, the defendant had no knowledge at all
4 that there had been any knowledge at all that there
5 had been any tape made of the conversation on
6 March 2-th or on March 25th, the date when allegedly
7 the defendant sold cocaine to Government's witness.

8 It was only, as one of the requirements in
9 the first day of the trial, certain information was
10 turned over to him. I heard, and the defendant heard
11 also, a tape and the second one where allegedly
12 \$4,000 was turned over to him.

13 He also heard the tape of the month of May
14 where there was further testimony of Mr. Pinol
15 around that particular time, but the defendant had
16 no knowledge until the first day of the trial that
17 there were tape recordings or tapes made refers to
18 March 20th and March 25th.

19 I think it is important in this case to
20 begin to evaluate what is the evidence the Government
21 has brought here in this case.

22 The first witness for the Government was a
23 Mrs. Rodas. As you saw her on that stand, I was a
24 bit surprised in terms of what my knowledge of the
25 case was and in seeing this woman, how she looked

1 and how she was dressed. She spoke quite clearly.
2
3 She had a manner about herself, although a little
4 hesitant. I imagine any person under pressure in
5 testifying is a little hesitant but they are fairly
6 articulate, but the reason we were surprised, be-
7 cause the only picture I had of this woman was a
8 picture which was introduced into evidence as
9 Defendant's Exhibit B, which shows a very alert,
10 completely different type of person than the woman
11 we saw on the witness stand.

12 I think you have to bring to bear in a
13 case like this or any case in the future, even
14 though the Government wants and the defendant wants
15 a Jury that knows nothing at all about the facts to
16 be prejudiced, but it doesn't mean you come to this
17 Jury here as people who had no experiences at all in
18 life. You come here as people who have to use their
19 good common sense and their judgment as you used
20 maybe yesterday, the day before or last week, and
21 in your everydy experiences.

22 You will have to make certain judgments on
23 your experiences and know-how in dealing with people,
24 in sizing up people, as they come here. You are
25 not here -- well, you came here with a wealth of

1 human experiences that each and every one of us,
2 including everyone in this Court has had. I mention
3 it now because even though she was dressed the
4 way she was, you can look at this picture. Even
5 though you have a right to evaluate her as to
6 the type of work she has done prior to being a
7 para-professional with the Board of Education, and
8 prior to that she worked 14 years managing a bar.
9 I don't know where the bar was located other than
10 in Brooklyn.
11

12 - I don't know if any of you go to bars or
13 have been there but for a person who manages a bar
14 for 14 years, there is a great deal of experience
15 that they have learned in handling people and
16 talking to them and probably in every bar whether
17 it is a fancy bar in Manhattan or a bar in Brooklyn
18 or Queens, it is the same thing.

19 You will have to evaluate this witness and
20 what her interest in this case was. This is a
21 very bright, shrewd type of woman who may be working
22 for herself in many ways. You heard her testify
23 that she, on cross-examination it was brought out,
24 she was arrested in January of this year and that
25 she had been involved in a conspiracy of bringing

1
2 into this country, not a few ounces of cocaine, but
3 28 pounds of cocaine into the United States.
4

5 This is a person you will have to evaluate
6 as to what her purpose was in cooperating with the
7 Government and also you will have to evaluate whether
8 or not she did cooperate or something did happen.
9 Possibly the Government doesn't know or does know,
10 I don't know. You will have to evaluate that.

11 You have heard a number of the other people
12 in the case who pleaded guilty received a five-
13 year probation without receiving any time, was able
14 to get out on the street right after her arrest
15 and others were sentenced to 12 years, seven years,
16 two years, one year.

17 You will have to evaluate her testimony in
18 what she had to gain in reference to cooperating
19 or period of cooperating with the Government.

20 There again you will have to make judgments on
21 people and how you size them up in terms of their
22 background and the fact this woman had been in
23 prison. She has some motivation of not going to
24 prison again. You will have to judge this, there
25 is no question at all, and from the Government's
witnesses and the United States of America gave

1
2 this woman \$10,000, \$6,000 on one day and \$4,000
3 on another day.

4 The testimony that came out, she testified
5 before she got the money and after she got the
6 money, nothing was found on here.

7 The interesting thing is here with all the
8 know-how, experience, the wealth of years of working
9 for the Government, that the woman also who had been
10 convicted in the same case with Mrs. Rodas, namely,
11 Georgie, who also started to cooperate with the
12 Government, also received a probation, was at the
13 Drug Enforcement office, was never searched before
14 or after, went into the car with Mrs. Rodas
15 when she had the \$6,000 as she stated she did have.
16 No one searched this woman at all with reference
17 to what she had on her and they knew she had been
18 involved before with 28 pounds of cocaine imported
19 into the United States.

20 I won't go into the question of reasonable
21 doubt. That is the responsibility of the Court.
22 You are going to have to find this defendant guilty
23 beyond a reasonable doubt.

24 As I go through some of the testimony, it may
25 be that I may overlook something. The fact I am a

1
2 lawyer doesn't mean I know everything, and sometimes
3 during the course of a trial one makes a mistake in
4 judgment, one forgets something. It can happen to
5 anyone. You have a right where in my summation I
6 don't cover a point, you have a right not to just
7 take what I say or what Mr. Levin-Epstein says,
8 but you have a right to say: I remember something
9 in the evidence as it occurred and they didn't men-
10 tion it.

11 You are the judges of the facts in the case.
12 You have a right to hear the testimony if you want
13 a point cleared up. It may be if I forget something,
14 you can place yourself in my position. You can say:
15 This wasn't discussed in summation but we recall this,
16 that or the other thing.

17 I ask you to recall this particular thing when
18 you get into the Jury room. Another interesting
19 thing occurred here where the United States of
20 America and the Drug Enforcement Bureau with all
21 its know-how took a recording. There was a tape
22 reference to what occurred on April the 2nd, 1974,
23 when alleged \$4,000 was paid by Mrs. Rodas to Miranda.
24 There has been no evidence introduced with reference
25 to that tape. As Mrs. Rodas said, there is nothing

1
2 on that tape at all with reference to \$4,000 at all.
3 This again is something you will have to evaluate
4 a witness of.

5 This is a very smart shrewd woman. I think
6 I said to her during the course of my cross-
7 examination with reference to that tape, I said:
8 Was there any mention of cocaine at all? And she
9 said: Well, Mr. Mirandola -- if my recollection is
10 not correct, yours controls -- that Mr. Mirandola,
11 whose middle name is Manuel and is called Mindola,
12 there was no mention of Mr. Miranda about any
13 cocaine.

14 Then she says: I mentioned something; and
15 that's all she said.

16 At no time did the Government introduce that
17 tape into evidence to corroborate this particular
18 witness. As this witness said she heard the tape
19 that there was nothing with reference to the \$4,000
20 appearing on there.

21 Then we go to the next witness, since I am
22 on the point of tapes. This Agent Pinol who testi-
23 fied. Here again the Government had tapes and
24 nothing appeared on these tapes with reference to
25 any conversation that this particular witness had

1
2 with my client, Mr. Miranda.

3 No efforts were made to introduce this tape.

4 I think I questioned Mr. Pinol with reference to
5 the tape and I think I asked him whether or not
6 he listened to the recording and he said: No.
7 And I think the Court did ask him at that particular
8 point whether or not he knew this was recorded
9 and he said: No, sir; in answer to the Court.

10 MR. LEVIN-EPSTEIN: May I ask where Mr. Todel
11 is reading from?

12 THE COURT: If you have a page --

13 MR. TODEL: 190, your Honor.

14 It got confusing if you go to page 189
15 in the testimony when I questioned Mr. Pinol
16 with reference to the following:

17 "Question: Do you know whether or not there
18 was a recording made of your visit to the bar on
19 that day?

20 "Answer: Yes, sir.

21 "Question: Have you listened to the recording?

22 "Answer: No, sir."

23 Now, here again we have a situation which
24 is a bit confusing because the Court did ask a
25 question which I mentioned a minute ago but no refer-

1
2 ence, with all the expertise the Government had
3 to introduce anything with reference to conversations
4 other than what he recalled, possibly might have
5 been said at that time.

6 I did ask Mr. Pinol when he thanked
7 Mr. Miranda, did he say that he was thanking him for.
8 I recall his statement was: No, he did not.

9 I asked him or if he had been asked what he had
10 in mind and I think the testimony came out he had
11 it in mind what Mrs. Rodas had told him. In other
12 words, very clear that when he thanked Mr. Miranda,
13 he only had in mind as to what Mrs. Rodas had told
14 Mr. Pinol.

15 You have heard Mr. Miranda yesterday testify
16 as to what occurred and what he said and how he
17 said it. When it comes to evaluating witnesses, you
18 are going to have to judge people as to how they
19 appeared and how they expressed themselves.

20 In evaluating Mr. Miranda, I'd like you to
21 really take into consideration that sometimes there
22 are little things which are said or which occur
23 during the course of the trial which really takes
24 on fairly large significance in coming to a decision
25 in this case.

1
2 You heard Mr. Miranda testify and he really
3 didn't have to testify the way he did testify, but
4 he said he was going to tell the truth as he saw
5 it and as he knew it. If ever there was a witness
6 who was testifying in this case as to what occurred
7 on March 25th in that automobile with Mrs. Rodas,
8 I'd like you to consider this very carefully.

9 I questioned Mr. Schnakenberg, the agent.
10 There were no fingerprints with reference to
11 the foil on the cocaine. In questioned with refer-
12 ence to the valises, and he said there were no
13 fingerprints taken from the valises.

14 This witness, this defendant could very easily
15 have said to you, without getting into the confusion
16 with reference to possible language here, that nothing
17 happened at all in that automobile. It would have
18 been the simplest thing for this defendant to say
19 that. There was no tape recording of this, it was
20 lost somewhere, the Government doesn't know, no
21 one in the Government knows. No, sir. No record
22 was made of the loss of the tape. No memorandum
23 was made by any agents with reference to this con-
24 versation.

25 This is something you will have to evaluate

1
2 in terms of the fact that the defendant, at least
3 these tapes provided to the defendant for April 2nd
4 and in May gave the defendant a possibility of going
5 into these questions to see whether or not there
6 was anything on this tape which would be harmful
7 to the defendant or of benefit to the defendant.

8 Here we have a situation where there was a
9 tape recording of an extremely important -- in fact,
10 the most important part of this case, and no record
11 was made of it, of the loss, no memorandum made by
12 any agents of the loss. Nothing was provided to
13 this defendant as provided on April 2nd and May 9th,
14 where there would be a possibility of testing a
15 witness.

16 I am not denying here that Mr. Castillo,
17 the nice young man, is not a nice young man. You
18 will have to weigh this in terms of the seriousness
19 of this case as to the fact that this particular
20 item was lost. You will have to evaluate
21 Agent Schnakenberg's testimony. He is fairly ex-
22 periented and I could visualize this, and this is
23 something you will have to use your own judgment on.

24 I would say possibly I am wrong and I might
25 be doing him a disservice, but I think it was a good

1
2 thing that his group supervisor McMullan was there
3 because there was a different person. You will
4 have to evaluate it in your own experience in terms
5 of what could have happened or could have occurred
6 or what actually occurred as Mr. Miranda stated.

7 MR. LEVIN-EPSTEIN: I object to what might
8 have happened and speculation.

9 THE COURT: They can't decide on speculation
10 and infer on testimony and I think that's all
11 Mr. Todel means.

12 MR. TODEL: Anything I say here is not evi-
13 dence. You can make certain inferences from your
14 judgment of people.

15 This defendant stated he is innocent of the
16 charges and you heard him testify in this Courtroom.
17 What happened to the \$10,000?

18 The defendant stated he never received \$10,000.
19 All the Government has in this case is the statement
20 from this woman, the fact she gave him \$6,000, she
21 gave him \$4,000 and on both of these occasions she
22 was accompanied from the Drug Enforcement Bureau with
23 her co-defendant, this woman called Georgie, and
24 Georgie was never searched before or after.
25

1
2 In addition, we had this third person, Toni,
3 even though Mrs. Rodas said: Toni, I have known her
4 for a number of years but don't know her last name
5 and don't know where she is.

6 This is something else you will have to
7 evaluate in determining -- coming to a decision
8 in this case because Toni, from the testimony, was
9 at the bar on almost every occasion that Georgie
10 and Mrs. Rodas were at the bar. hasn't been
11 here to testify. We don't know what occurred in
12 the bar when Mrs. Rodas had the \$4,000 or the \$6,000.
13 We don't know.

14 You heard the defendant testify as to what
15 occurred. In a little while after Mr. Levin-Epstein
16 sums up, the Court will charge you as to what the
17 law is in this case. I think that after you have
18 heard the Judge's charge, the evaluated evidence
19 that came in here, and really you have had the
20 opportunity of evaluating the defendant in this
21 particular case, it hasn't been a long trial, and
22 you have been able to evaluate the agents and also
23 the lack of evidence, the tapes which were in the
24 possession of the Government, apparently no longer
25 in their possession without any explanation other

Summation - Todel

1
2
3 than what we heard her yesterday, and the fact that
4 other tapes have been provided to the defendant
5 which really in these tapes you heard nothing which
6 was incriminating, otherwise they wouldn't have
7 been introduced in evidence here by the prosecution.

8 MR. LEVIN-EPSTEIN: I object to the trial tac-
9 tics of the Government.

10
11 (Continued on next page.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

fols.

*Heinrich**ON FILE**EXHIBIT*

12

1
2 evaluate the testimony of any other witness.

3 As I said before in evaluating the testimony
4 of the defendant, you can consider the personal
5 interest that every defendant has in the result
6 of a case and, on the other hand, the difficulty
7 of evaluating any other witness as to what took
8 place between Mrs. Rodas and the defendant on
9 March 25, 1974, this year.

10 ★ There has been some reference to tapes
11 that were not used and witnesses that were not
12 here. There is a general rule on that that is
13 stated, if it is specially within the power of
14 the prosecution or defense to produce a witness
15 who could give material testimony on an issue or
16 to produce other evidence, the failure to call
17 the witness may give rise to an inference that the
18 evidence would be unfavorable.

19 You cannot draw any such inference with
20 regard to a witness or exhibit that is equally
21 available to both parties or where the witness
22 testimony would be merely cumulative. There is
23 no obligation on either side to produce all the
24 evidence that might be brought in court, only to
25

13

1 produce such that is deemed necessary and you
2
3 always bear in mind that there is never any duty
4 on a defendant in any criminal case to call any
5 witnesses or to produce any evidence.

6 Finally, on evaluation you are not to
7 decide the case or any issue of fact on the basis
8 of the number of witnesses or the number of questions.
9 The Government has produced more witnesses than
10 the defendant but your decision should rest on the
11 quality of the testimony and the credibility of
12 the witnesses and not on the number of the witnesses
13 or the length of their testimony.

14 Now, there have been some objections to
15 testimony, but not as many as in some trials. I
16 repeat what I said in the beginning, you are not
17 to be influenced by the fact that there were
18 objections to some questions and some evidence was
19 ruled out and you are not to try to guess what
20 the answer would have been to a question I excluded
21 and you are to disregard any evidence that I said
22 should be stricken out and decide the case only
23 on the evidence that came in with my approval
24 and without objection or with objection that I
25 overruled.

AFFIDAVIT OF MAILING

STATE OF NEW YORK

COUNTY OF KINGS

EASTERN DISTRICT OF NEW YORK

} ss

EVELYN COHEN

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 12th day of March 19 75 he served a copy of the within

Appellee's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Irving Anolik, Esq.

225 Broadway

New York, N.Y. 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Evelyn Cohen

Sworn to before me this

12th day of March, 19 75

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
N.Y. 24-4501966
Qualified in Kings County
Commission Expires March 30, 1975

